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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 194.

HENRY S. LITTLE, RECEIVER OF THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, PLAINTIFF IN ERROR,

vs.

SAMUEL D. BOWERS, COMPTROLLER OF THE CITY OF ELIZABETH AND THE CITY OF ELIZABETH.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

FILED OCTOBER 16, 1886.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, JULY 29, 1889.

1 NEW JERSEY, *ss:*

The State of New Jersey to Samuel D. Bowers, comptroller of the city of Elizabeth, and the City of Elizabeth, Greeting:

[SEAL.] We, being willing for certain reasons to be certified of and concerning a certain tax levy and assessment of the city of Elizabeth for the taxes for the year eighteen hundred and seventy-six upon certain property of the Central Railroad of New Jersey, to wit: Docks and land piers 8 and 9; dock and water front from the creek to Marshall street; shops and land along the sound between the Delaware, Lackawanna and Western railroad front and Livingston street, except five acres exempt by charter; lots numbers eleven hundred and sixty-six to twelve hundred and twenty-two, inclusive, East Broad street, in said city of Elizabeth, and about four acres of land near the depot; and of a statement as to when, to whom, and for how long said property was sold for said taxes, where sold by said city, do command you that said assessment and the proceedings for said property for said taxes you certify and send to our supreme court of judicature, to be held at Trenton on the first Tuesday of November next, that therein may be done what of right and according to the constitution and the laws of the State of New Jersey ought to be done.

Witness Mercer Beasley, Esquire, chief justice of our said supreme court, at Trenton, this sixth day of November, eighteen hundred and eighty-two.

BENJ. F. LEE, *Clerk.*

WILLIAM R. WILSON, *Attorney.*

2 Indorsed: "New Jersey supreme court. Henry S. Little, receiver of the Central Railroad Company of New Jersey, pl'ff, *vs.* Samuel D. Bowers, comptroller of the city of Elizabeth, & the City of Elizabeth, def'ts. On certiorari. Taxes for 1876. Writ returnable Nov'r term, 1882. W. R. Wilson, pl'ff's att'y. *Allocatur.* B. Van Syckel, jus. sup. ct. Nov. 6, 1882."

3 New Jersey Supreme Court. June Term, 1884.

SAMUEL D. BOWERS, Comptroller, &c., *ads.* HENRY S. LITTLE, Receiver, &c. } On Certiorari. Taxes, 1876.

The court having heard the argument of counsel and inspected the assessment removed by the writ in the cause and duly considered the reasons filed—

It is ordered that said assessment be in all things affirmed, with costs to be taxed.

Entered August 25th, 1884.

On motion of—

FRANK BERGEN, *Att'y.*

I, Benj. F. Lee, clerk of the supreme court of the State of New Jersey, do certify that the foregoing is a true copy of an order made in the above-stated cause by said court and entered in the minutes thereof.

In testimony whereof I have hereto set my hand and the seal of said court, at Trenton, this fourth day of June, A. D. eighteen hundred and eighty-five.

[SEAL.] BENJ. F. LEE, *Cl'k.*

Indorsed: "New Jersey supreme c't. Samuel D. Bowers, comptroller, &c., *ads.* Henry S. Little, receiver, &c. On certiorari. Copy of judgment. Frank Bergen, att'y."

4 *Order.*

The court having heard the argument of counsel and inspected the assessment removed by the writ in the cause, and duly considered the reasons filed—

It is ordered that said assessment be in all things affirmed, with costs to be taxed.

Entered August 25, 1884.

On motion of—

FRANK BERGEN, *Att'y.*

I, Benjamin F. Lee, clerk of the supreme court of the State of New Jersey, do certify that the foregoing is a true copy of an order made in the above-stated cause by said court, and entered in the minutes thereof.

In testimony whereof I hereto set my hand and the seal
[L. S.] of said court, at Trenton, this fourth day of June, A. D. eighteen hundred and eighty-five.

BENJ. F. LEE, *Clerk.*

Therefore it is considered that the said Henry S. Little, receiver of the Central Railroad Company of New Jersey, prosecutor, take nothing by his said writ, and that the said Samuel D. Bowers, comptroller, &c., and the said City of Elizabeth do go thereof without day, &c.; and it is further considered by our said court here that the said Samuel D. Bowers, comptroller, &c., and the said City of Elizabeth do recover against the said Henry S. Little, receiver, &c., —— for his costs and charges by him about his defence in
5 this behalf laid out and expended by the court, now here adjudged to the said Samuel D. Bowers and the City of Elizabeth, and with their assent according to the form of the statute in such case made and provided, and that the said Samuel D. Bowers and the City of Elizabeth have execution thereof.

Judgment signed this 25th day of August, 1884.

M. BEASLEY, *Ch. Jus.*

6 New Jersey Supreme Court.

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,
vs.
SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and The City of Elizabeth.

On Certiorari for Taxes for the years 1876, 1877, 1878, 1879, 1880, 1881, and 1882.

Statement of facts to be used on the argument of the above writs of certiorari, for the above years, on lands in the city of Elizabeth.

I. The Central Railroad Company of New Jersey is the owner of a tract of land of twenty acres on Staten Island Sound, at Elizabethport, and distinguished on a map hereto annexed and marked No. 1, and is at the terminus of the railroad at the sound, and so used before the extension to Jersey City in 1864.

II. The Central Railroad Company of N. J. is also the owner of a tract of land of about four acres, also at Elizabethport, at the place where the Elizabeth and Newark railroad, the Long Branch railroad, and the Central railroad main track from Elizabeth to New York intersect, and on which is situated the depots on the annexed map marked No. 2.

3. The Central Railroad Company of New Jersey is also the owner and in the occupation of the tract of land on East Broad street, near the crossing of the Central railroad and Pennsylvania railroad tracks, and containing about four acres, and on which is located the engine-house, superintendent's office, and part of
7 the same tract is used as a delivery yard, and shown on map No. 3, with the railroad tracks on the same.

All the above tracts were assessed by the city of Elizabeth for municipal, State, and county taxes, for the years 1876, 1877, 1878, 1879, 1880, & 1881, and 1882, which amount to about $18,000, besides interest. The exact amount will be furnished to the court if deemed necessary.

It is conceded that the said Central Railroad Company never accepted the provisions of any of the general laws respecting taxation of railroad corporations, but claims only to be taxable under the provisions of its charter and supplements, and has up to this time and during the years mentioned been so taxed and paid to the treasurer of the State the taxes under the 8 section of the act of 1854, and that the said act was accepted within the six monthsa; and the question in dispute is whether the company is taxable by the said city of Elizabeth for State, county, and municipal taxes on the land in question.

On the property described on map 1 is located the machine and repair shops, and also the wharves and piers.

The laws referred to are contained in the pamphlet submitted with the case. The location of the property and buildings and tracks and

neighboring streets are correctly laid down on the maps herewith submitted.

W. R. WILSON,
Att'y of Prosecutor.
FRANK BERGEN,
Att'y for Defendants.

(Here follow maps marked pp. 8, 9, 10, & 11.)

12 New Jersey Supreme Court.

HENRY S. LITTLE, Receiver, &c.,
v.
SAMUEL D. BOWERS, Comptroller, &c.

On certiorari to review taxes for the years 1876 to 1881, both inclusive, levied under the act of April 2d, 1873, Rev. —, p. 1166.

For the prosecutor, W. R. Wilson and B. Williamson.
For the defendants, Frank Bergen.

The opinion of the court was delivered by DIXON, J.: The claim of the Central Railroad Company in this case is that by force of the supplement to the act to incorporate the Somerville and Easton Railroad Company, approved March 17th, 1854 (Pamph. L., p. 524), and the company's written assent to and acceptance of the same, an irrepealable contract was made between the State and the corporation to the effect that the latter should annually pay a tax of one-half of one per centum upon the cost of the road, and that no other tax or impost should be levied or assessed upon the company.

If the question were an open one I should have no hesitation in reaching the conclusion that the power of taxation could not be made the subject of contract by the Legislature; that it was entrusted to the Legislature to be exercised and not to be destroyed or abridged; that as it resided in our prototype, the English
13 Parliament, unimpaired by acts of previous sessions of that body, so it was possessed by our Legislature, unfettered save as fundamental law restrained it, and that the constitutional clause protecting contracts could not, with reason, be extended to what in all our history has been regarded not as a bargain between parties at liberty to assent or dissent, but as an exertion of sovereign power controlling the willing and unwilling alike; but, unfortunately, as I think, the question is closed by judicial decisions which no court in this State can disturb, and, unless these decisions shall be reversed, it must be conceded that the Legislature has power to barter away this essential attribute of government.

But in view of the extraordinary character of this power, of the great inconvenience consequent upon even its occasional use, of the utter destruction of government that would follow its frequent and impartial exercise, courts must feel constrained to decide that it has been put in force only when the opposite judgment cannot be formed by a rational mind. If to doubt whether the State has parted with

any public right is to be resolved that it has not, certainly language can scarcely express the reluctance of courts to infer that this most important of all public rights has been surrendered.

With these prepossessions, then I come to consider whether the alleged contract was made.

The act of March 17th, 1854, is a supplement to the charter of the Somerville and Easton Railroad Company, which was granted February 26th, 1847. On February 14th, 1846, the Legislature passed a general law concerning corporations (Pamph. L., p. 16), the sixth section of which enacted that the charter of every corporation
14 which should thereafter be granted should be subject to alteration, suspension, and repeal in the discretion of the Legislature. This provision did not bind subsequent legislatures so that they could not grant irrepealable charters, but it created a law which can never justly be put out of sight in determining whether any charter granted was designed to be irrepealable.

All acts of the Legislature are performed in contemplation of existing laws and repeals by implication are not favored, and hence this law of 1846 is to be considered as embodied in every corporate charter thereafter passed unless a purpose to exclude it be plainly perceived.

In the charter of the Somerville and Easton Railroad Company, approved in 1847, no intimation of such a purpose exists, nor does there in the supplement of 1854, unless it be found in the ninth section thereof, which declares that the supplement shall take effect only in case within six months after its passage the company shall file a written assent to and acceptance of all its provisions.

This clause is relied upon to establish the irrepealable contract.

But it appears to me to be entitled to no such scope. It is the general rule that the charters of private corporations become operative only upon their acceptance by the persons interested.

Sometimes this acceptance is presumed from the advantageous character of the grant. Sometimes it is indicated by an exercise of the powers granted. In the present case the Legislature chose to require that it should be evidenced by an express declaration made within a limited time, but whether the needed assent is to be given in one form or another seems of little importance in determining the nature of the rights conferred. The selection of any form
15 should not give rise to an inference that it was intended to repeal *pro hac vice* a prior law otherwise consistent with the charter, and so to abridge the taxing power of the State. Whether the assent of the company was necessary for the efficiency of this supplement may be doubted, but since it so materially enlarged the powers and correlative duties of the corporation the Legislature might have fairly considered it to be more than an alteration of the charter, and in that aspect the requirement of a prompt and formal acceptance was only a reasonable precaution. This is all the significance that should be ascribed to the section in question.

But it is said that the decision of the Supreme Court of the United States in New Jersey *v.* Yard, 95 U. S., 104, necessitates the oppo-

site conclusion. I do not think so. That case and the present are quite dissimilar in the following important particulars:

1. The charter of the Morris and Essex Railroad Company was granted in 1835, and therefore was not affected by the law of 1846 above mentioned, and the Federal court seems to have been unwilling to hold that the act of 1846 was applicable even to subsequent amendments of that charter. This left the power of alteration dependent on a supplement passed in 1836, which expressly confined the power to itself and the original charter. The claim of exemption rested upon a supplement passed in 1865, which the court, therefore, adjudged to be an absolute grant; but in the case before us there can be no doubt of the propriety of interpreting the charter of the Central Railroad Company and its supplements with the act of 1846 in view.

2. The acceptance required from the Morris and Essex Railroad Company by the supplement of 1865 was not of the whole act,
16 but only of the section imposing the tax, as if it were designed to put that section upon some other footing than the rest of the statute; but in the Central Company's act of 1854 the acceptance was to embrace all the provisions of the statute, so that the taxing clause is in no way specialized.

3. In the Morris and Essex Company's case the supreme court regarded the State's right to tax the company as a vexed question prior to 1865, which the Legislature desired to have settled, and which, therefore, seemed to be in a posture for adjustment by contract; but it does not appear that before the act of 1854, or ever until recently, any dispute was raised against the power of the State to tax the Central Company, or that, in assenting to that supplement, the company was yielding any consideration for what, if the present claim be good, possessed enormous value.

4. The language of the section imposing the tax upon the Morris and Essex Railroad Company is itself suggestive of a contract for exemption. It declared that the tax should be in lieu and satisfaction of all other taxation or imposition whatsoever by or under the authority of this State or any law thereof. In the Central Company's act of 1854 no such terms are used; it simply directs a tax of one-half of one per centum to be paid, provided that no other tax or impost shall be levied or assessed upon the said company. This proviso I understand to be merely a declaration that the Legislature then intended that the company should not then be chargeable with any other tax than the one-half of one per centum. Without the proviso it might have been claimed that the tax act of March 3rd, 1854 (Pamph. L., 296), subjected all the real and personal estate of the company to taxation; with it such an inference was rebutted.

17 These differences between the situations of the two companies involves the main grounds on which the Supreme Court of the United States based its decision, and they deprive the present claim of any support from the judgment of that high tribunal.

The taxes under review should be affirmed, with costs.

18 New Jersey Court of Errors and Appeals.

THE STATE, HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey, Plaintiff in Error, and SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and The City of Elizabeth, Defendants in Error.	In Error to Review Judgment on Certiorari for Taxes for the year 1876.

(Returnable June 6, 1885.)

Similar writs were taken out to review judgments given on writs of certiorari to review assessment for taxes for the years 1877, 1878, 1879, 1880, 1881, and 1882, the same statement of facts being used in each case.

19 NEW JERSEY, *To wit:*

The State of New Jersey to our justices of our supreme court, Greeting:

[L. S.] Because in the record and proceedings and also in the giving of the judgment in a plaint which was in our said supreme court before you between Henry S. Little, receiver of the Central Railroad Company of New Jersey, being the prosecutor, and Samuel D. Bowers, comptroller of the city of Elizabeth, and The City of Elizabeth, defendants, on a certiorari issued out of our said supreme court to the said Samuel D. Bowers, comptroller of the city of Elizabeth, and the City of Elizabeth, directed to review the taxes for the year 1876 levied on said railroad property in said city of Elizabeth and specified in said writ of certiorari, as is said, manifest error hath intervened to the great damage of the said Henry S. Little, receiver of the Central Railroad Company of New Jersey, prosecutor as aforesaid, as by his complaint we are informed, we, being willing that the error, if any there be, should in due manner be corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given, then you send, distinctly and openly, under your seal, the records and proceedings and plaint aforesaid, with all things touching and concerning the same, to our court of errors and appeals, before the judges thereof, on the sixth day of June next and this writ, and that, the records and proceedings aforesaid being inspected, we may cause to be further done thereupon what of right and according to law ought to be done.

Witness our chancellor and president judge of our said court of errors and appeals, at Trenton aforesaid, the twenty-second
20 day of May, in the year of our Lord one thousand eight hundred and eighty-five.

HENRY C. KELSEY, *Clerk.*

WILLIAM R. WILSON, *Attorney.*

The answer of the justices of the supreme court of New Jersey within named, the record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the court of errors and appeals, in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY, *C. J.* [L. S.]

Indorsed: "New Jersey court of errors, &c. Henry S. Little, receiver, &c., pl'ff in error, *vs.* Samuel D. Bowers, comptroller of the city of Elizabeth, & The City of Elizabeth, def'ts in error. Writ of error. Ret'ble June 6th, 1885. William R. Wilson, att'y for pl'ff in error. Filed June 6, 1885. Henry C. Kelsey, clerk."

21 New Jersey Court of Errors & Appeals.

THE STATE, HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey, Plaintiff in Error,
vs.
SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and The City of Elizabeth, Def'ts. } In Error.

22 Afterwards, that is to say, on the sixth day of June, eighteen hundred and eighty-five, in the court of errors and appeals, comes the said Henry S. Little, receiver of the Central Railroad Company of New Jersey, by William R. Wilson, his attorney, and says that in the record and proceedings aforesaid and in the judgment aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that judgment in the plea aforesaid was given against the said Henry S. Little, receiver of the Central Railroad Company of New Jersey, when, by the law of the land, on the reasons assigned in the said supreme court and upon the case made up and submitted to the said court, and for other reasons, judgment in the said plea ought to have been given for the said Henry S. Little, receiver of the Central Railroad Company of New Jersey, and against the said Samuel D. Bowers, comptroller of the city of Elizabeth, and the City of Elizabeth; therefore in this there is manifest error.

And further there is manifest error in this, viz:

1. Because the said Samuel D. Bowers, comptroller of the city of Elizabeth, and the City of Elizabeth had no right or power to make the said statement and valuation and assessment for taxes for the year 1876 on which the said writ of certiorari is based.

2. Because the act of April 2, 1873, entitled "An act to establish just rules for the taxation of railroad corporations and to induce their acceptance and uniform adoption," does not apply to or include the prosecutor or the charter of the said Central Railroad Company of New Jersey.

3. Because if the said act does in terms apply to the said charter of the said Central Railroad Company of New Jersey, it is contrary to and in violation of the Constitution of the United States and of the State of New Jersey, and therefore null and void.

23 4. Because the said statement and valuation and assessment for taxes heretofore made are without any sufficient legal authority, contrary to law, and in violation of the vested rights of the prosecutor and the Central Railroad Company of New Jersey and erroneous in form and substance.

5. Because the said Central Railroad Company of New Jersey, by its charter and supplements thereto, is exempt from any further imposition of taxes, and particularly from the taxes involved in this suit, because the plaintiff in certiorari claims the benefit of the provisions of the charter and the supplements thereto as a contract between the State of New Jersey and the said company.

6. Because the said Central Railroad Company of New Jersey claims exemption by reason of a contract with the State of New Jersey, created by acts of the Legislature, as hereinafter set forth and specified as follows, to wit:

"An act to incorporate the Somerville and Easton Railroad Company," approved February 26, 1847.

An act entitled "A supplement to an act entitled 'An act to incorporate the Somerville and Easton Railroad Company,' passed February 26, eighteen hundred and forty-seven," approved February 22, 1849.

An act entitled "A further supplement to an act entitled 'An act to incorporate the Somerville and Easton Railroad Company,' passed February 26, eighteen hundred and forty-seven," approved March 17, 1854.

An act entitled "A further supplement to an act entitled 'An act to incorporate the Somerville and Easton Railroad Company,' passed February 26, eighteen hundred and forty-seven," approved February 23, 1860.

24 An act entitled "A further supplement to an act entitled 'An act to incorporate the Somerville and Easton Railroad Company,' passed February 26, eighteen hundred and forty-seven," approved April 6, 1865.

An act entitled "An act respecting the Central Railroad Company of New Jersey and the Newark and New York Railroad Company," approved March 17, 1870.

The Central Railroad Company of New Jersey performed all the matters and things required on its part to be performed to entitle it to the benefit of the said acts.

WILLIAM R. WILSON,
Att'y for Plaintiff in Error.

Endorsed: "New Jersey court of errors and appeals. The State, Henry S. Little, receiver of the Central Railroad Company of New Jersey, pl'ff in error, and Samuel D. Bowers, comptroller, &c., *& al.*, def'ts. In error. Assignment of errors. William R. Wilton, att'y of pl'ff in error. Filed November 16, 1885. Henry C. Kelsey, clerk."

25 New Jersey Court of Errors and Appeals.

THE STATE, HENRY S. LITTLE, Receiver, &c., Plaintiff in Error,
vs.
SAMUEL D. BOWERS, Comptroller, &c., and THE CITY OF ELIZABETH, Defendants in Error.
} Certiorari. On Error to Sup. C't.

Joinder in Error.

And hereupon afterwards, to wit, on the fourteenth day of November, A. D. eighteen hundred and eighty-five, the said Samuel D. Bowers, comptroller of the city of Elizabeth, and the said The City of Elizabeth, by Frank Bergen, their attorney, come into court and say that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, *or in giving the judgment aforesaid*, and they pray here that the court may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c.

FRANK BERGEN,
Attorney for the Defendants in Error.

It is hereby agreed that the above joinder in error may be filed as if in time.

November 14th, 1886.

W. R. WILSON,
Attorney for Plaintiff in Error.

26 Indorsed: "N. J. court of errors & appeals. The State, Henry S. Little, receiver, &c., plaintiff in error, *vs.* Samuel D. Bowers, comptroller, &c., and The City of Elizabeth, defendants in error. Certiorari. On error to sup. c't. Joinder in error. Frank Bergen, att'y for def'ts in error. Filed November 20, 1885. Henry C. Kelsey, clerk."

27 New Jersey Court of Errors and Appeals in the Last Resort in All Causes.

THE STATE, HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey, Plaintiff in Error,
vs.
SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and THE CITY OF ELIZABETH, Defendants in Error.

This cause having been argued at the November term, 1885, of this court by William R. Wilson, of counsel with plaintiff in error, and Frank Bergen, of counsel with defendants in error, and the court having taken time to consider the matter, and now, on the first day of July, 1886, of the term of June, 1886, the court being of opinion (among other things) that the act of April 2nd, 1873, under which the valuation or assessment was made, does not impair any contract between the State of New Jersey and the Central Railroad

Company of New Jersey, and that the said several acts of the Legislature of the State of New Jersey particularly cited, specified, and referred to in the assignment of errors in this cause, or either or any of them, and the acceptance thereof by the said "The Central Railroad Company of New Jersey," did not constitute an irrepealable contract between the State of New Jersey and the said company, and that the said act of April 2nd, 1873, was a repeal of the provisions in the said acts of March 17, 1854, and of March 17, 1870, under and by which the said company claims exemption from taxes
28 other than as therein specified, and its property thereby became subject to the assessment made under the said act of April 2nd, 1873, and the said court do order that the judgment of the supreme court be in all things affirmed with costs, and that the record be remitted, &c.

On motion of defendants in error, rule entered July 7th, 1886.

FRANK BERGEN,
Att'y for Defendants in Error.

Approved.
B. VAN SYCKEL,
Jus. Sup. C't.

Indorsed: "New Jersey court of errors and appeals in the last resort, &c. The State, Henry S. Little, receiver of the Central Railroad Company of New Jersey, plaintiff in error, *vs.* Samuel D. Bowers, comptroller of the city of Elizabeth, and the City of Elizabeth, defendants in error. Order of affirmance. Filed July 7, 1886. Henry C. Kelsey, clerk."

29 THE STATE OF NEW JERSEY, HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey, Prosecutor, Plaintiff in Error,
vs.
SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and THE CITY OF ELIZABETH, Defendants in Error.

To the Honorable Theodore Runyon, chancellor, presiding judge of the court of errors and appeals in the last resort in all causes of New Jersey:

The petition of Henry S. Little, receiver of the Central Railroad Company of New Jersey, respectfully showeth—

That the State of New Jersey, your petitioner, being prosecutor, brought suit in the court of errors and appeals in the last resort in all causes of New Jersey, entered to June term, 1885, by writ of error to a judgment of the supreme court of the State of New Jersey, and wherein the State, your petitioner, being prosecutor, was plaintiff and Samuel D. Bowers, comptroller of the city of Elizabeth, and the City of Elizabeth were defendants, in which suit in said court of errors and appeals the State of New Jersey, your petitioner, being prosecutor, was plaintiff in error and the said Samuel D. Bowers, comptroller as aforesaid, and the said The City of Elizabeth were defendants in error.

That the said suit in the said supreme court of New Jersey was prosecuted by the said Henry S. Little, receiver as aforesaid,
30 by writ of certiorari to said Samuel D. Bowers, comptroller as aforesaid, and the said The City of Elizabeth, requiring them to certify to the said supreme court certain tax levies and assessments of the city of Elizabeth for the taxes of the year eighteen hundred and seventy-six upon certain property of the Central Railroad Company of New Jersey and the proceedings for said property for said taxes, in which suit the said supreme court ordered "That said assessments be in all things affirmed with costs to be taxed."

That on the seventh day of July, 1886, the court of errors and appeals in the last resort in all causes of the State of New Jersey ordered said judgment be affirmed with costs, and afterwards the said judgment was duly entered at —, in the State of New Jersey.

That the said judgment of the said court of errors and appeals is a judgment of the highest court of record of the State of New Jersey.

That the judgment of the said court is final.

That the right of the State of New Jersey, by an act of the Legislature of said State of April 2, 1873, entitled "An act to establish just rules for the taxation of railroad corporations and to induce their acceptance and uniform adoption," to make the Central Railroad Company of New Jersey taxable by the said city of Elizabeth for State, county, and municipal taxes on the land of said company in question, and thereby to impair the obligation of contracts previously entered into by the said State with the said company, is the Federal question involved:

That the decision and judgment of the court of errors and appeals in the last resort in all causes of the State of New Jersey
31 aforesaid was against the clause in article 1, section 10, of the Constitution of the United States forbidding a State to pass a law impairing the obligation of contracts.

Your petitioner therefore prays for the allowance of a writ of error to the court of errors and appeals in the last resort in all causes of the State of New Jersey, in order that the judgment of the said court may be re-examined and reversed or affirmed in the Supreme Court of the United States.

And he will ever pray.

HENRY S. LITTLE,
By B. WILLIAMSON, *His Att'y.*

Benj. Williamson, being duly sworn, deposes and says that the facts set forth in the foregoing petition are true, to the best of his knowledge and belief.

B. WILLIAMSON.

Sworn and subscribed before me this 7th day of July, A. D. 1886, at Trenton.

THEODORE RUNYON, *C.*

Indorsed: "The State of New Jersey, Henry S. Little, receiver of the Central Railroad Company of New Jersey, prosecutor, plaintiff

in error, *vs.* Samuel D. Bowers, comptroller of the city of Elizabeth, and The City of Elizabeth, defendant in error. Petition for writ of error. The writ of error within prayed for is filed July 7, 1886. Henry C. Kelsey, clerk."

32 THE UNITED STATES OF AMERICA, *ss*:

To Samuel D. Bowers, comptroller of the city of Elizabeth, and The City of Elizabeth, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the court of errors and appeals in the last resort in all causes in the State of New Jersey, wherein The State of New Jersey, Henry S. Little, receiver of the Central Railroad Company of New Jersey, prosecutor, is plaintiff in error and you, Samuel D. Bowers, comptroller of the city of Elizabeth, and The City of Elizabeth are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as is in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Theodore Runyon, chancellor, presiding judge of the court of errors and appeals in the last resort in all causes of the State of New Jersey, this seventh day of July, in the year of our Lord one thousand eight hundred and eighty-six.

THEODORE RUNYON,
Chancellor, Presiding Judge of the Court of Errors and Appeals in the Last Resort of New Jersey.

33 NEW JERSEY, }
Union County, } *ss*:

William R. Wilson, of full age, being duly sworn according to law, deposes and says that on July fifteenth, eighteen hundred and eighty-six, he served a certified copy of the annexed citation personally on Samuel D. Bowers, within named, and also a certified copy of the same personally on Joseph H. Grier, the mayor of said city of Elizabeth.

WILLIAM R. WILSON.

Sworn and subscribed before me July 15th, 1886.

C. ADDISON SWIFT,
Notary Public of New Jersey. [SEAL.]

Indorsed: "Supreme Court of the United States. The State of New Jersey, Henry S. Little, receiver of the Central Railroad Company, prosecutor, plaintiff in error, *vs.* Samuel D. Bowers, comptroller of the city of Elizabeth, and The City of Elizabeth, defendants in error. Citation to defendants in error. Issued July 7, 1886. Henry C. Kelsey, clerk. Filed July 17, 1886. Henry C. Kelsey, clerk."

34 Know all men by these presents that we, Benjamin Williamson, of the city of Elizabeth, in the county of Union, Henry S. Little, of the town of Matawan, in the county of Monmouth, and Anthony Reckless, of the town of Red Bank, in the county of Monmouth, all in the State of New Jersey, are held and firmly bound unto Samuel D. Bowers, comptroller of the city of Elizabeth, in the State of New Jersey, and the said City of Elizabeth, in the State of New Jersey, in the full and just sum of one thousand dollars, to be paid to the said Samuel D. Bowers, comptroller of the city of Elizabeth, New Jersey, and the said City of Elizabeth, New Jersey, their successors, certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this ninth day of July, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately, at a court of errors and appeals in the last resort in all causes in and for the State of New Jersey, in a suit depending in said court between The State of New Jersey, Henry S. Little, receiver of the Central Railroad Company of New Jersey, prosecutor, plaintiff in error, and the said Samuel D. Bowers, comptroller of the city of Elizabeth, and The City of Elizabeth, defendants in error, judgment was rendered against the said prosecutor; and the said Henry S. Little, receiver of the Central Railroad Company of New Jersey, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Samuel D. Bowers, the said comptroller as aforesaid, and the said The City of
35 Elizabeth, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of this obligation is such that if the said Henry S. Little, receiver of the Central Railroad Company of New Jersey, shall prosecute his said writ of error to effect and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

B. WILLIAMSON. [SEAL.]
H. S. LITTLE. [SEAL.]
A. RECKLESS. [SEAL.]

Sealed and delivered in presence of—
HERMAN W. THIELE.

Approved by—
THEODORE RUNYON,
Chancellor, Presiding Judge of the Court of Errors and Appeals in the Last Resort in All Causes of New Jersey.

Indorsed: "Supreme Court of the United States. The State of New Jersey, Henry S. Little, receiver of the Central Railroad Company of New Jersey, prosecutor, plaintiff in error, *vs.* Samuel D.

Bowers, comptroller of the city of Elizabeth, and The City of Elizabeth, defendants in error. Bond *sur* writ of error. Filed September 20, 1886. Henry C. Kelsey, clerk."

36 Supreme Court of the United States. October Term, 1886.

Whereas lately, at the court of errors and appeals in the last resort in all causes of the State of New Jersey, in a suit depending in said court between The State of New Jersey, Henry S. Little, receiver of the Central Railroad Company of New Jersey, prosecutor, plaintiff in error, and Samuel D. Bowers, comptroller of the city of Elizabeth, and The City of Elizabeth, defendants in error, judgment was rendered against the said Henry S. Little, receiver as aforesaid, which said judgment was that the judgment of the supreme court of the State of New Jersey be affirmed, and the said Henry S. Little, receiver of the Central Railroad Company of New Jersey, having obtained a writ of error to remove the said cause to the Supreme Court of the United States, and filed a transcript of the record of said court in said cause in the office of the clerk of the Supreme Court of the United States to reverse the judgment in the aforesaid suit, now we, Anthony Reckless, of Monmouth county, New Jersey; B. Williamson, of Elizabeth, in the county of Union and State of New Jersey, and Henry S. Little, of the city of Trenton, in the county of Mercer and State of New Jersey, undertake and bind ourselves to pay or cause to be paid to James H. McKenney, clerk of the Supreme Court of the United States, or his successors in office, all fees that shall accrue to him, the said clerk, and be charged to said Henry S. Little, receiver aforesaid, in the prosecution of said writ of error.

Witness our hands and seals this eighth day of July, A. D. 1886.

B. WILLIAMSON. [SEAL.]

37 H. S. LITTLE. [SEAL.]

A. RECKLESS. [SEAL.]

Signed and sealed in the presence of—
HERMAN W. THIELE.

I, S. D. Oliphant, clerk of the circuit court of the United States for the district of New Jersey, do hereby certify that the within-named obligors are known to me to be perfectly good and responsible for any costs that might accrue in said cause.

Dated Sept. 15, 1886.

S. D. OLIPHANT *Clerk.*

Indorsed: "Supreme Court of the United States. The State of New Jersey, Henry S. Little, receiver of the Central Railroad Company of New Jersey, prosecutor, plaintiff in error, *vs.* Samuel D. Bowers, comptroller of the city of Elizabeth, and The City of Elizabeth, defendants in error. Bond for clerk's costs. Filed September 20, 1886. Henry C. Kelsey, clerk."

38 Court of Errors and Appeals. March Term, 1886.

THE STATE, HENRY S. LITTLE, Receiver, Prosecutor, Plaintiff in Error,
vs.
SAMUEL D. BOWERS, Comptroller, &c., Defendant in Error.
} Error to Supreme Court.

For the plaintiff in error, William R. Wilson.
For the defendant in error, Frank Bergen.

The CHANCELLOR: The judgments in the seven cases with the above title should be affirmed, for the reasons given by the supreme court in their opinion.

Endorsed: "Court of errors and appeals of N. J. The State, Henry S. Little, receiver, prosecutor, plaintiff in error, *vs.* Samuel D. Bowers, comptroller, &c., defendant in error. Error to supreme court. 7 cases. Opinion. Filed March term, 1886. Henry C. Kelsey, clerk."

39 STATE OF NEW JERSEY, DEPARTMENT OF STATE.

[Vignette.]

I, Henry C. Kelsey, secretary of state of the State of New Jersey and ex-officio clerk of the court of errors and appeals in the last resort in all causes, do hereby certify that I have compared the above and foregoing with the original records and proceedings now remaining of record and on file in my office in the above-entitled cause, and that it is a correct transcript therefrom; and also a true copy of the security on the writ of error and security for costs and the original citation and service thereof; and also a copy of the opinion of the court of errors and appeals.

Seal of the Secretary of the State of New Jersey.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Trenton, this fifth day of October, A. D. eighteen hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh.

HENRY C. KELSEY, *Clerk.*

40 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of "the court of errors and appeals in the last resort in all causes" of the State of New Jersey, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of errors and appeals in the last resort in all causes, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of New Jersey, Henry S. Little, receiver of the Central Railroad Company

of New Jersey, prosecutor, plaintiff in error, and Samuel D. Bowers, comptroller of the city of Elizabeth, and The City of Elizabeth, the defendants in error, upon the levy and assessment of certain taxes on the property of said railroad in the city of Elizabeth for the year 1876, wherein was drawn in question the validity of a treaty or statute of or authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the
41 validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Henry S. Little, receiver of the Central Railroad Company of New Jersey, the said prosecutor and plaintiff in error, as by this complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court
42 may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the seventh day of July, in the year of our Lord one thousand eight hundred and eighty-six.

[The Seal of the U. S. Circuit Court, Dist. of New Jersey.]

S. D. OLIPHANT,
Clerk of the Circuit Court of the United States for the District of New Jersey, Third Circuit.

Allowed by—
THEODORE RUNYON,
Chancellor, Presiding Judge of the Court of Errors and Appeals in the Last Resort in All Causes of New Jersey.

The answer of the judges of the court of errors and appeals in the last resort in all causes of the State of New Jersey, within named.

The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the

Supreme Court of the United States in a certain schedule to this writ annexed, as within commanded.

THEODORE RUNYON,
Chancellor, Presiding Judge of the Court of Errors and Appeals in the Last Resort in All Causes of New Jersey.

43 [Endorsed:] Supreme Court of the United States. The State of New Jersey, Henry S. Little, receiver of the Central Railroad Company of New Jersey, prosecutor, plaintiff in error, *vs.* Samuel D. Bowers, comptroller of the city of Elizabeth, and The City of Elizabeth, defendants in error. Writ of error to the court of errors and appeals of the State of New Jersey. Returnable 2nd Monday in October, 1886.

44 Supreme Court of the United States.

THE STATE OF NEW JERSEY (HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey, Prosecutor), Plaintiff in Error,

v.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and The City of Elizabeth, Defendants in Error.

Afterward—that is to say, on the 2d Monday of October, in the year eighteen hundred and eighty-six—in the Supreme Court of the United States comes the said Henry S. Little, receiver of the Central Railroad Company of New Jersey, by his attorney, and says that in the record and proceedings aforesaid and in the judgment aforesaid given in the court of errors and appeals in the last resort in all causes of the State of New Jersey there is a manifest error in this, to wit, that the said court of errors and appeals in the last resort in all causes of the State of New Jersey decided that the act of the Legislature of the State of New Jersey entitled "An act to establish just rules for the taxation of railroad corporations and
45 to induce their acceptance and uniform adoption," approved April 2d, 1873, applies to and repeals all the provisions in the charter of the said The Central Railroad Company of New Jersey inconsistent with the provisions of the said act, whereas, in truth and in fact, the said act of the Legislature of the State of New Jersey does not apply to and repeal all the provisions in the charter of the said The Central Railroad Company of New Jersey inconsistent with the provisions of the said act of 1873.

There is also error in this, that the said court of errors and appeals decided that the act of April 2d, 1873, of the Legislature of New Jersey is not contrary to and in violation of the Constitution of the United States, which forbids a State to pass any law impairing the obligation of a contract, and is not void against the said company, whereas in truth and in fact the said act of 1873 of the State of New Jersey is contrary to the Constitution of the United States and void as against the said company, because it violates the contract made between the State of New Jersey and the said company.

There is also error in this, that the said court of errors and appeals decided that the said The Central Railroad Company of New Jersey, by its charter and supplements thereto, is not exempt from any further imposition of taxes and particularly from the
46 taxes involved in this suit, whereas in truth and in fact the said The Central Railroad Company of New Jersey, by its charter and supplements thereto, is exempt from any imposition of taxes further than is provided for in its said charter and the supplements thereto, because the provisions of the said charter and the supplements thereto constitute a contract between the State of New Jersey and the said company.

There is also error in this, that the said court of errors and appeals decided that the said The Central Railroad Company of New Jersey is not exempted from taxation under the act of April 2d, 1873, of the State of New Jersey, by reason of a contract with the State of New Jersey, created by acts of the Legislature as hereinafter set forth and specified, to wit:

"An act to incorporate the Somerville and Easton Railroad Company," approved February 26, 1847.

An act entitled "A supplement to an act entitled An act to incorporate the Somerville and Easton Railroad Company, passed February 26, eighteen hundred and forty-seven," approved February 22, 1849.

An act entitled "A further supplement to an act entitled 'An act to incorporate the Somerville and Easton Railroad Company,'
47 passed February 26, eighteen hundred and forty-seven," approved March 17, 1854.

An act entitled "A further supplement to an act entitled 'An act to incorporate the Somerville and Easton Railroad Company,' passed February 26, eighteen hundred and forty-seven," approved February 23, 1860.

An act entitled "A further supplement to an act entitled 'An act to incorporate the Somerville and Easton Railroad Company,' passed February 26, eighteen hundred and forty-seven," approved April 6, 1865.

An act entitled "An act respecting the Central Railroad Company of New Jersey and the Newark and New York Railroad Company," approved March 17, 1870; whereas, in truth and in fact, the said The Central Railroad Company of New Jersey is exempt from taxation under the said act of 1873 of the State of New Jersey by reason of a contract with the State of New Jersey, created by the acts of the Legislature of the said State, as hereinabove set forth.

There is also error in this, that the said court of errors and appeals gave judgment for the said Samuel D. Bowers, comptroller of the city of Elizabeth, and The City of Elizabeth; whereas it should have given judgment for the said Henry S. Little, receiver
48 of the Central Railroad Company of New Jersey.

Wherefore the said Henry S. Little, receiver of the Central Railroad Company of New Jersey, prays that the judgment aforesaid, by reason of the errors aforesaid and for other errors appear-

ing in the record and proceedings aforesaid, may be reversed, annulled, and for nothing holden, and that the said tax levies and assessments of the city of Elizabeth for the taxes for the year eighteen hundred and seventy-six upon the said certain property of the Central Railroad Company of New Jersey and the proceedings for said property for said taxes may be adjudged illegal, unwarranted, and may be vacated and set aside and wholly annulled, and the said Henry S. Little, receiver of the Central Railroad Company of New Jersey, the said prosecutor, plaintiff in error, may be restored to all things he has lost on occasion of the said judgment.

GEORGE R. KAERCHES,
Attorney of Pl'ffs in Error.

49 [Endorsed:] Supreme Court of the United States. October term, 1886. The State of New Jersey, Henry S. Little, receiver of the Central Railroad Company of New Jersey, prosecutor, plaintiff in error, *v.* Samuel D. Bowers, comptroller of the city of Elizabeth, and The City of Elizabeth, defendants in error. Assignment of errors.

Endorsed on cover: New Jersey court of errors & appeals. No. 194. Henry S. Little, receiver of the Central Railroad Company of New Jersey, plaintiff in error, *vs.* Samuel D. Bowers, comptroller of the city of Elizabeth, and The City of Elizabeth. Filed October 16, 1886.

In the Supreme Court of the United States,

OCTOBER TERM, 1889.

No. 194.

HENRY S. LITTLE, RECEIVER OF THE CENTRAL RAILROAD OF NEW JERSEY,
Plaintiff in Error,

vs.

SAMUEL D. BOWERS, COMPTROLLER OF THE CITY OF ELIZABETH, AND THE CITY OF ELIZABETH,
Defendants in Error.

Error to the Court of Errors and Appeals of the State of New Jersey.

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ROBERT W. DE FOREST,
GEORGE R. KAERCHER,
BENJAMIN WILLIAMSON,
For Plaintiff in Error.

Evening Post Job Print, N. Y.

Supreme Court of the United States.

HENRY S. LITTLE, Receiver of the Central Railroad of New Jersey,
Plaintiff in Error,

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and The City of Elizabeth,
Defendants in Error.

STATEMENT OF THE CASE, P. 1 TO P. 7.
SPECIFICATIONS OF ERROR, P. 7 TO P. 9.
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APPENDIX OF LAWS, P. 51 TO P. 96.

STATEMENT OF THE CASE.

The question here presented is whether taxation of the Central Railroad Company of New Jersey under the New Jersey Act concerning the taxation of railroad corporations, approved April 2, 1873, impairs the obligation of a contract between that Company and the State of New

Jersey, found in an act of 1854, and the written acceptance of that act by the Company.

The facts on which this question is presented, are as follows:

The Central Railroad Company of New Jersey was incorporated under the name of the Somerville and Easton Railroad Company by a special act in 1847. (Appendix of Laws, p. 51.)

The 14th section of this act provides for the taxation of the railroad, and reads as follows:

"14. And be it enacted, That as soon as the railroad, with its appendages, shall be finished so as to be used, the president and treasurer of the said company shall file under oath or affirmation, a statement of the amount of the cost of the said road, including all expenses and the amount of all purchases made by virtue of this act, in the office of the Secretary of this State; and annually thereafter, the president and treasurer of the said company shall, under oath or affirmation, make a statement to the Legislature of this State of the proceeds of said road, until the net income of said road shall amount to six per centum upon the amount of its cost; and as soon as the net proceeds of said railroad shall amount to six per centum upon its cost, the said corporation shall pay to the Treasurer of this State a tax of one-half of one per centum on the cost of said road, to be paid annually thereafter on the first Monday of January of each year; provided that no other tax or impost shall be levied or assessed upon the said company."

This charter, unlike that of the Morris and Essex Railroad Company granted by the same State about the same time, which was before the Court on the same point in *New Jersey* v. *Yard*, 95 *U. S.*, 104, contained no reservation of the

power "to alter, suspend or repeal in the discretion of the Legislature."

By the general law of 1846, however, it was provided that "the charter of every corporation which should hereafter be granted should be subject to alteration, suspension and repeal in the discretion of the Legislature."

In 1849, the Somerville and Easton Railroad Company was authorized to purchase the Elizabethtown and Somerville Railroad, and the name of the Company was changed to its present title (Appendix of Laws, p. 62).

In 1854, the supplement was passed, which, with its formal acceptance in writing by the Company, is believed to create and evidence the contract in question. This supplement, which is contained in full at page 67 of the Appendix of Laws, gave to the Company additional franchises, among which were the right to build docks into the Sound at Elizabethport, the right to "locate new lines," and contained the following provision as to taxation and as to its acceptance by a formal affirmative act of the Company:

"8. And be it enacted, That it shall be the duty of the treasurer of said company, on the first Monday in January of each and every year hereafter, to pay to the Treasurer of this State a tax of one-half of one per centum upon the cost of said road, as shown by the annual report of such cost, made the year preceding the said first Monday of January in which such payment as aforesaid shall be made; provided, that no other tax or impost shall be levied or assessed upon the said company; and section fourteen of the act of incorporation is hereby repealed.

"9. And be it enacted, That if the said company shall, within six months from the passage of this act, file in writing their assent to and acceptance of all the provisions of this act, then the said act shall take effect immediately

thereafter; but in case the said company shall refuse or neglect so to do within the time specified, then this act shall be null and void."

It should be noted that previous to the passage of this supplement, the Company was liable to be taxed only "as soon as the *net proceeds of said railroad shall amount to "six per centum upon its cost.*" By this supplement the State secured the same tax on cost *without reference to any earnings whatsoever, net or gross.*

It is also to be noted, that among the many special acts relating to this Company collated in the Appendix, this is the *single one* which took effect only on *filing written acceptance by the Company,* and in default of such acceptance became void. The State did not intend to exercise any compulsion on the Company. It might accept the immediate burden of taxation or not, as it chose. If it did not, then it paid no taxes until the road became remunerative and earned six per cent. on cost. If it did, then it paid the tax, whether the road was remunerative or not, but "no other tax or impost" was to be "levied or assessed" upon it, for *this act of* 1854 *contains no reservation of the power to alter, amend or repeal.*

The Company duly accepted this act within the required six months; made the annual report as required by it, and paid the tax imposed thereby on the cost of its road, without reference to its earnings, for twenty-two years, no questions being raised during that time as to the right of the State or any municipality to impose any "other tax or impost." During this period, its authorized capital stock was increased from $2,000,000 fixed by its original charter to $30,000,000 (see Appendix of Laws), a fact which is important as indicating the amount of money invested on the faith of its franchises. During the same period a large mortgage debt was created.

In 1876 and subsequent years, taxes, which are the subject of this litigation, were assessed by the City of Elizabeth. They were distinctly an "other tax or impost" within the meaning of the supplement of 1854, and were distinctly upon the class of property upon which "no other tax or impost" than that fixed by the supplement could be lawfully imposed if that supplement was then in force.

In 1873, three years before the first assessment of these taxes, the State had passed a general railroad tax law (Appendix of Laws, p. 85). This law begins with the following recital:

"WHEREAS, For the encouragement of railroad enterprise, laws creating and regulating railways in this state usually provide for the payment by them, in consideration of their chartered privileges, of a fixed rate upon their capital stock of the cost of their works, in lieu of all other public impositions whatsoever; and whereas, it is nevertheless contended that the property of such corporations being largely acquired for, or through the growth and extension of their prosperity, should contribute to the charges and expenses essential for municipal and county purposes; and whereas, it is desirable in order to the avoidance of litigation and future dissatisfaction that such municipal and county taxation shall be authorized, and that the same shall be permanently fixed and regulated; now, therefore."

It then imposes a tax of one per cent. upon all real property used for railroad purposes outside of the road-bed and track, not exceeding one hundred feet in width, for the benefit of counties, townships and cities. It closes with the following recital and provision:

"AND WHEREAS, Certain railroad corporations owning or occupying railroads in this state, claim exemption from all taxation, whether state, county or municipal, further than is provided for by their charters, or by special laws for their benefit now existing, which claims, even if legal, subject said corporations to public ill-will, and make it their

interest to forego the same and agree to the scheme of tax ation hereby established; now, therefore,

"10. Be it enacted, That any such railroad corporation may within six months from the approval of this act, make and execute under their common seal and the signature of their president; and file in the office of the secretary of state, a declaration in writing, surrendering all claim to exemption from taxation by them heretofore had or made, and accepting the provisions of this act in lieu thereof."

The Central Railroad Company of New Jersey never accepted the provisions of this or any other general law respecting the taxation of railroad companies, and has, up up to this time and during the years mentioned in the writ of *certiorari*, paid to the Treasurer of the State the tax contracted to be paid under the provisions of the eighth section ofthe act of 1854.

The taxes now before the Court were assessed on the theory that the general tax law of 1873 repealed sections 8 and 9 of the Supplement of 1854, and thereby subjected the property of the railroad to an "other tax or impost."

From the assessment so levied by the City of Elizabeth, the Company sued out a writ of certiorari to the Supreme Court of the State of New Jersey, on the ground that these assessments were illegal and in violation of its contract with the State. The Supreme Court of New Jersey affirmed the validity of these taxes on the ground that a contract did not exist, and that the general railroad tax law of 1873 was applicable to the Central Railroad of New Jersey. (Opinion of Dixon, *J.*, Record, p. 4.) The Company appealed to the Court of Errors and Appeals of the State of New Jersey, where the judgment of the lower Court was affirmed on the same ground. (Judgment of Court of Errors, Record, p. 11.) No separate opinion was delivered.

This writ of error is taken from the judgment of the Court of Errors and Appeals of the State of New Jersey,

and is intended to raise the question whether that Court, in affirming the validity of the taxes imposed under the act of 1873, did not, thereby, impair the obligation of a contract entered into between the State and the Company and thus violate the Constitution of the United States.

SPECIFICATIONS OF ERROR.

1. The Court of Errors and Appeals of the State of New Jersey erred in holding that the act of the Legislature of the State of New Jersey, entitled "An act to establish just rules for the taxation of railroad corporations, and to induce their acceptance and uniform adoption," approved April 2, 1873, applies to and repeals all the provisions in the charter of the said Central Railroad Company of New Jersey inconsistent with the provisions of the said act, whereas, in truth and in fact, the said act of the Legislature of the State of New Jersey does not apply to and repeal all the provisions in the charter of the said The Central Railroad Company of New Jersey inconsistent with the provisions of the said act of 1873.

2. The Court of Errors and Appeals of the State of New Jersey erred in holding that the act of April 2, 1873, of the Legislature of New Jersey is not contrary to and in violation of the Constitution of the United States, which forbids a State to pass any law impairing the obligation of a contract, and is not void against the said Company, whereas, in truth and in fact, the said act of 1873 of the State of New Jersey is contrary to the Constitution of the United States, and void as against the said Company, because it violates the contract made between the State of New Jersey and the said Company.

3. The Court of Errors and Appeals of the State of New Jersey erred in holding that the said The Central Railroad

Company of New Jersey, by its charter and supplements thereto, is not exempt from any further imposition of taxes and particularly from the taxes involved in this suit, whereas, in truth and in fact, the said The Central Railroad Company of New Jersey, by its charter and supplements thereto, is exempt from any imposition of taxes further than is provided for in the said charter and the supplements thereto, because the provisions of the said charter and the supplements thereto constitute a contract between the State of New Jersey and the said Company.

4. The Court of Errors and Appeals of the State of New Jersey erred in holding that the said The Central Railroad Company of New Jersey is not exempted from taxation under the act of April 2, 1873, of the State of New Jersey, by reason of a contract with the State of New Jersey, created by acts of the Legislature as hereinafter set forth and specified, to wit:

"An act to incorporate the Somerville and Eastern Railroad Company," approved February 26, 1847.

An act entitled "A supplement to an act entitled An act to incorporate the Somerville and Easton Railroad Company, passed February 22, 1849."

An act entitled "A further supplement to an act entitled 'An act to incorporate the Somerville and Easton Railroad Company,' passed February 26, eighteen hundred and forty-seven," approved March 17, 1854.

An act entitled "A further supplement to an act entitled 'An act to incorporate the Somerville and Easton Railroad Company,' passed February 26, eighteen hundred and forty seven," approved April 6, 1865.

An act entitled "An act respecting the Central Railroad Company of New Jersey and the Newark and New York Railroad Company, approved March 17, 1870;" whereas, in truth and in fact, the said The Central Railroad Company

of New Jersey is exempt from taxation under the said act of 1873 of the State of New Jersey, by reason of a contract with the State of New Jersey, created by the acts of the Legislature, as hereinbefore set forth.

5. The Court of Errors and Appeals of the State of New Jersey erred in giving judgment for the said Samuel D. Bowers, Comptroller of the City of Elizabeth, and the City of Elizabeth; whereas, it should have given judgment for the said Henry S. Little, Receiver of The Central Railroad Company of New Jersey.

ARGUMENT.

FIRST POINT...

The question is *res adjudicata*, having been determined by this Court in the case of New Jersey *v.* Yard, 95 U. S., 104.

The identity of all material facts in that case and in the present one is apparent from the following comparison:

The Contract of the Morris & Essex Railroad (New Jersey v. *Yard*, 95 *U. S.*, 104).	*The Contract of The Central Railroad of New Jersey.*
No constitutional limitation on the power of the legislature to contract.	No constitutional limitation on the power of the legislature to contract.
Charter subject to alteration by its very terms. The precise language of this reservation is as follows: "The legislature reserve to themselves the right to alter, amend or repeal this act whenever they think proper." Section 20 of Charter.	Charter not subject to alteration, by its terms, which contain no reservation. The general law of 1846, however, provides as follows: "The charter of every corporation which shall hereafter be granted by the legislature shall be subject to alteration, suspension or repeal in the discretion of the legislature." Laws of 1846, p. 16.
"The legislature reserve to themselves the right to alter or amend this supplement, or the act to which it is a supplement, whenever the public good may require it." First supplement.	

Charter provides for taxation at ½ of one per cent. on cost of road "as "soon as the net proceeds of the rail- "road amount to seven per cent. (in any one year) upon its cost."

Supplement passed in 1865 granting additional franchises and making this tax commence on completion of road without reference to earnings.

The precise language of this section of supplement is as follows:

"Be it enacted, that the tax of one- "half of one per cent. provided by their "said original act of incorporation, to "to be paid by the said company to "the State whenever the net earnings of "the said company amount to seven per "cent. upon the cost of the road, shall "be paid at the expiration of one year "from the time when the road of the "said company shall be open and in use "to Phillipsburgh, and annually there- "after, which tax shall be in lieu and "satisfaction of all other taxation or im- "position whatsoever, by or under the "authority of this State, or any law "thereof."

This supplement was enacted *after* the general law of 1846, and when that law was in full force.

Formal acceptance of this change in the mode of taxation was required by the following provision:

"Provided, that this section shall not "go into effect or be binding upon the "said company until the said company, "by an instrument duly executed under "its corporate seal, and filed in the of- "fice of the Secretary of State, shall have "signified its assent hereto, which assent "shall be signified within sixty days after "the passage of this act, or this act shall "be void."

The company duly filed its assent.

THE SUPPLEMENT CONTAINED NO RESERVATION OF THE POWER TO ALTER OR REPEAL.

Charter provides for taxation at ½ of one per cent. on cost of road "as "soon as the net proceeds of said rail- "road shall amount to six per centum "upon its cost."

Supplement passed in 1854 granting additional franchises and making this tax commence January 1, 1855, without reference to earnings.

The precise language of this section of supplement is as follows:

"And be it enacted, That it shall be "the duty of the treasurer of said com- "pany, on the first Monday in January "of each and every year heareafter, to "pay to the Treasurer of this State a "tax of one-half of one per centum "upon the cost of said road, as shown "by the annual report of such cost, made "the year preceding the said first Mon- "day of January in which such payment "as aforesaid shall be made; provided "that no other tax or impost shall be "levied or assessed upon the said com- "pany; and section fourteen of the act "of incorporation is hereby repealed."

This supplement was enacted *after* the general law of 1846, and when that law was in full force.

Formal acceptance of this change in the mode of taxation was required by the following provision:

"And be it enacted, That if the said "company shall, within six months after "the passage of this act, file in writing "their assent to and acceptance of all "the provisions of this act, then the said "act shall take effect immediately there- "after; but in case the said company "shall refuse or neglect so to do within "the time specified, then this act shall "be null and void."

The company duly filed its assent.

THE SUPPLEMENT CONTAINED NO RESERVATION OF THE POWER TO ALTER OR REPEAL.

The conclusions reached by this Court, in New Jersey *v.* Yard, are as follows:

"Statutory reservations of the right to repeal, whether contained in a charter or in a general law, unlike similar constitutional provisions, are only binding on a succeeding legislature so far as it chooses to conform to it; and, if it so intends, an irrepealable legislative contract may be made. It is, therefore, in every case a question whether the legislature making the contract intended that the former provision for repeal or amendment should, by implication, become a part of the new contract.

"In this case, the contract of 1865 for a specific rate of taxation is inconsistent with any such implication, because: 1. There was a subject of dispute and a fair adjustment of it for a valuable consideration on both sides. 2. The contract assumed, by legislative requirement, the shape of a formal written contract. 3. The terms of the contract, that 'this tax shall be in lieu and satisfaction of all other taxation or imposition whatsoever by or under the authority of this State, or any law thereof,' exclude, in view of the whole transaction, the right of the State to revoke it at pleasure."

SECOND POINT.

Judge Dixon, of the Supreme Court of New Jersey, frankly states the "prepossessions" with which he comes to consider the case to be "that the power of taxation could "not be made the subject of contract by the legislature, and "though, unfortunately, this question is closed by judicial "decisions which no court in this State (N. J.) can disturb, "unless reversed, courts must feel constrained to decide "that it has been put in force only when the opposite judg- "ment cannot be formed by a rational mind. If to doubt "whether the State has parted with any public right is to be "resolved that it has not, certainly language can scarcely

"express the reluctance of courts to infer that this most "important of all public rights has been surrendered."

He then seeks to distinguish between the Morris and Essex case and the present one in four "important particulars" (Record, p. 6).

Are any of these four particulars material? Do any of them make the reasoning of this Court in New Jersey *v.* Yard less applicable to this case?

JUDGE DIXON'S FOUR PARTICULARS OF ALLEGED DISSIMILARITY.

1st Particular.—The charter of the Morris and Essex was granted before the general law of 1846. *This left the power of alteration dependent on a supplement passed in* 1836, *which expressly confined the power to itself and the original charter.*

But the power of alteration reserved in the Central Railroad case is also confined to the original charter by the act of 1846, which is no broader in this respect than the reservation contained in the Morris and Essex charter.

This particular is not material, even if the contrary were the case, because it has been decided by this Court that the Legislature of New Jersey could make an irrepealable contract; so that the only question here is whether they did intend so to do or not.

2d Particular.—The acceptance required from the Morris and Essex was not of all the provisions of the act, as in the case of the Central, but only of the section imposing the new tax.

Acceptance of "all the provisions" certainly includes the acceptance of any one. Both acts granted new privileges to the companies and coupled this grant with an immediate burden of taxation.

"All the provisions" of both acts became "void" unless

this new burden of taxation were formally accepted in writing within a specified time. The new burden imposed on the companies by these acts was the same in each case, viz.: immediate taxation: and the State exacted affirmative acceptance of this new burden, to ensure the "meeting of minds" as well as to evidence its right to collect the new tax. This "meeting of minds" was certainly evidenced quite as effectually by acceptance of "all the provisions of the act" as by acceptance of the single provision as to taxation. The fact *that written acceptance was required and that this requirement was complied with*, not the precise form by which that acceptance was given, is all that is essential to the question now before the Court.

3rd Particular.—"*In the Morris and Essex Company's case,* "*the Supreme Court regarded the State's right to tax the Com-* "*pany as a 'vexed question' which the Legislature desired to* "*have settled, but it does not appear that before the act of* 1854, "*or ever, until recently, any dispute was raised against the* "*power of the State to tax the Central Company, or that, in* "*assenting to that settlement, the Company was yielding any* "*consideration for what, if the present claim be good, possessed* "*enormous value.*"

The same "vexed question" existed in both cases, as appears from a complete extract from the opinion of Justice Miller in New Jersey *v.* Yard.

"And the State wished the vexed question of the right "to tax the corporation to be settled, *For the Company* "*denied the right of the State to tax them under that charter* "*until the road paid them a net income of seven per cent. per* "*annum on its cost.*"

What are "the net proceeds" which must amount, in the one case, to seven, in the other case, to six per cent. upon cost, before any tax whatsoever became due, involves the eternal question of the dividing line between ordinary re-

pairs and betterments, and will always be a "vexed question." The consideration yielded, to wit: payment of an immediate tax upon cost without reference to "net proceeds," in lieu of a tax to commence only when there were "net proceeds" of a fixed amount, was the same in each case.

The existence, however, of a "vexed question" is only material to the present issue, in so far as that question would constitute consideration for the contract. Other consideration than the settlement of a dispute is quite as sufficient to sustain the contract in this particular. Yielding an immunity from all taxation until six per cent. on cost was earned certainly constitutes sufficient consideration to sustain the contract, and the adequacy of that consideration, if material, should be determined by the situation of affairs when the contract was made and not at the present time. Then the State was obliged to encourage the investment of capital in railroads intended to develop its resources, by complete immunity from taxation until the investors realized legal interest on their money, and must have regarded the immediate payment of taxes without regard to profits, an important consideration for the State. The State certainly held the Company to its part of the bargain for more than twenty years without any suggestion of inadequate consideration. It is only now, when the policy of the State toward railroads has changed, and the time has come for the railroad to obtain its part of the consideration, that an effort is made to repudiate the bargain.

4th Particular.—"*The language of the section imposing the tax* "*upon the Morris and Essex Railroad is itself suggestive of a* "*contract for exemption, whereas in the Central Company's act of* "*1854, no such terms are used. It simply directs a tax to be paid*

"provided that no other tax or impost shall be levied or assessed upon the said Company."

While the language, which this Court construed to be a contract in the Morris and Essex case, was to Judge Dixon's mind only, as he states, "suggestive of a contract from exemption," *the precise language used in the Central Company's supplement had been shortly before the time of its passage construed by the Courts of New Jersey to be a* "POSITIVE ENACTMENT EXEMPTING THE COMPANY FROM ALL OTHER TAX," and the Legislature, in using the very words which had thus received a judicial interpretation, must have intended to give to those words the same legal effect which had been given to them at the time by the Supreme Court of their State.

State (The Morris & Essex R. R. Co., Prosecutors) *v.* Minton, 3 Zabriskie, p. 529, and Fifth Point, *infra.*

The suggestion of Judge Dixon that, without the proviso, it might have been claimed that the tax act of March 3, 1854, subjected all the real and personal estate of the Company to taxation, is met by the same case; which had determined the law on this subject at the time of its passage, and in view of which, both the general law and the Central's supplement must have been framed, to wit: that such a general act did not repeal the special tax provisions of corporate charters.

THIRD POINT.

The Legislature which passed the Supplement of 1854 had the power to make a contract which should not be subject to repeal or modification by one of the parties without the

consent of the other. The only question is whether they did intend to make such a contract with the Railroad Company in this instance.

New Jersey *v.* Yard, 95 U. S., 113.

FOURTH POINT.

They did intend to make such a contract.

1. The Legislature was not willing to rest this contract on the usual statutory form alone, depending for its validity as a contract upon some action of the corporation under it to bind it to its terms; but they required from the Company a formal written acceptance within six months, or else it became wholly inoperative. The Company duly executed this acceptance. There was then a formal, complete, written instrument, indicating this contract, signed by the presiding officers of the two Houses of the New Jersey Legislature and the Governor for one party, and the President, Secretary and seal of the Railroad Company for the other party. It does seem as if the legislative intention was to make a contract in the same manner and on the same terms of equal obligation as other contracts are made, and not to pass a statute which it could repeal or amend the day after it was signed by the parties.

The full force of this formal acceptance, as evidencing the legislative intent to make a contract, is only apparent on examination of other acts relating to this and other companies. Such an exceptional requirement as formal written acceptance on the part of the Company can be explained on no other theory than that the Legislature intended to thus accentuate the difference between a contract by simple legislative grant, and a formal agreement to be executed by

both parties and to contain within its express terms the covenants by which each party intended the other to be bound.

Of the thirteen acts relating to the Central Railroad Company of New Jersey, *but this one* required formal written acceptance on the part of the Company for its validity. Of the twenty-two separate acts relating to the Morris and Essex Railroad, *only one*, the Supplement of 1865, which has been declared by this Court to be an irrepealable contract, required any written acceptance on the part of that Company to make it operative.

The charters of all New Jersey railroads organized by special acts contain provisions for taxation, and of the 840 acts, constituting charters or supplements to charters, passed before the Constitution forbidding special legislation went into effect, *only fifteen* required formal acceptance of the company for their validity. Of these fifteen, *eleven* constituted or related to contracts between the State and the so-called United Companies, formerly called the Camden and Amboy Railroad and Transportation Company and The New Jersey Railroad and Transportation Company, respecting taxation, transit dues to the State, increase of stock, and their peculiar relations to the State; *one* confirmed the Erie foreclosure sale; *one* authorized change of name, and *two*, the Morris and Essex and New Jersey Central supplements, changed contracts to pay a tax on net proceeds *when earned* into obligations to pay an immediate tax on cost without regard to earnings.

This analysis of the special laws of New Jersey relating to railroads, illustrates the peculiar force given by the lawmakers of that State to the requirement of formal acceptance. Such acceptance was intended to give to a contract between a corporation and the State the same solemnity which a seal imports to a contract between individuals.

2. There was a well-understood subject of contract. The corporation wished authority to build new lines and the power to acquire right of way, while the State wished the vexed question of the right to tax the corporation to be settled; for the Company denied the right of the State to tax them under their charter until the road paid them a net income of six per centum per annum on its cost. The Legislature said, if you will consent to pay the one-half of one per cent. tax as originally agreed, and commence to do this on the first of January, 1855, we will authorize the franchises you seek as to new lines, and will agree that the tax shall be fixed at one-half of one per cent. Here was a subject of disagreement adjusted, additional rights granted, and the tax fixed both as to its rate and the time of commencement. Can it be believed that it was intended by either party to this contract that, after it was signed by both parties, one was bound forever and the other only for a day? That it was intended to be a part of the contract, that the State of New Jersey was, at her option, to be bound or not? That there was implied in it, when it was offered to the acceptance of the Company, the right on the part of the Legislature to alter or amend it at leisure? If the State intended to reserve this right, what necessity for asking the Company to accept in such formal manner the terms of a contract which the State could at any time make to suit itself?

3. The language used by the Legislature is inconsistent with the right of repeal claimed.

"Provided that no other tax or impost shall be levied or "assessed upon the said company." Is there here to be implied "except such taxes or imposts as may hereafter be "imposed"? Such a provision would be to nullify the whole contract. How could this proviso—"that no other "tax or impost shall be levied or assessed"—be carried into

effect if other taxes and imposts might be levied or imposed the next day?

But there can be no possible doubt as to the intent of the Legislature in using this language, because, as rarely happens, these *identical words used in this identical connection had, at the time, received a judicial interpretation by the Courts of New Jersey.*

FIFTH POINT.

The Legislature of New Jersey intended, by the words, "provided that no other tax or impost shall be levied or assessed upon the said company," to make a contract exempting the Company from any tax or impost, other than the tax of one-half of one per cent., *because these words, as used in the charter of another railroad company, had been adjudged by the Supreme Court of New Jersey to have precisely that legal effect.*

This decision had only been made some three years before the Central's Supplement was passed, was the law of the State at that time, and must have been in the minds of the Legislature when that Supplement was framed. Even if the meaning of this language is in itself debatable, *this decision fixes its meaning as used at that time by the Legislature of New Jersey in a corporate charter.*

State (The Morris & Essex Railroad Company, Prosecutors) *v* Minton, 3d Zabriskie, 529.

The syllabus in this case is as follows:

"The charter of the Morris and Essex Railroad Company "provides that as soon as the net proceeds of said railroad "shall amount to seven per cent. upon its cost, the said cor- "poration shall pay to this State a tax of one-half of one per

" cent. on the cost of said road; provided, that no other tax " or impost shall be levied or assessed upon the said com- " pany. It was held:

" 1. That the exemption under the word *provided* was a " positive enactment exempting the company from all other " tax, and not a condition upon which the tax of one-half of " one per cent. was payable."

The reasoning of the Judge, who delivered the opinion of the Court, is as follows:

" There can be no reasonable doubt, in my opinion, that " the legislature intended, by this language, to exempt the " company's property from taxation until the improvement " it was chartered to accomplish should become remuner- " ative, that is, until the income from the road should enable " the stockholders to divide seven per cent. upon their out- " lay. The enterprise proposed was one of public importance. " It was certain that the construction of the road would " benefit the public, but it was not so certain that it would " be profitable to the stockholders; and the legislature, " therefore, held out to them the immunity of exemption " from taxation as a consideration for the public benefit to " be conferred, and an inducement to encounter the haz- " ard; and this immunity was to continue until the profits " of the road should be such as to enable the company to " pay a reasonable tax. The argument, that the effect of " the clause, prefixed by the word 'provided,' is simply to " relieve the company from the obligation to pay the pro- " spective tax of one-half of one per cent. in case any other " tax or impost should be levied or assessed upon it, is un- " sound. If there was no exemption there was no contin- " gency; there was a *certainty* that other taxes *would* be " levied upon the property of the company, and therefore a " stipulation for a prospective tax of one-half of one per " cent. *in case* such other taxes were *not* levied, would be " an absurdity."

Nor is this the only contemporaneous decision of the New Jersey Courts, giving a legal and statutory meaning to such language.

The following words in railroad charters or supplements had been held to constitute *irrepealable contracts*, even when not emphasized by the requirement of acceptance:

"That no further or other tax or impost shall be levied "or assessed upon said company," in the charter of Paterson and Hudson River R. R. Co.

State *v.* Berry, 2 Harrison, 80 (1839).

Gardner, Assessor of Jersey City, *v.* State, 1 Zab., 557 (1845).

"That no other tax or impost shall be levied or assessed "upon the company," in the charter of the Camden and Amboy R. R. Co.

Camden & Amboy R. R. & T. Co., *v.* Hillegas, 3 Harrison, 11 (1840).

Same *v.* Commissioners of Appeal, 3 Harrison, 71 (1840).

Same *v.* Commissioners of Mansfield, 3 Zabriskie, 510 (1852),

"That no other or further tax or imposition shall be "levied or imposed upon the company," in the charter of the New Jersey Railroad and Transportation Co.

The New Jersey R. R. & T. Co. *v.* Newark, 3 Dutcher, 185 (1858).

It thus appears that the Legislature *could not have chosen more precise language* in which to frame an irrepealable contract, than the very words they used. The formal acceptance required only emphasized their intention to bind the Company to the bargain.

An abstract of the cases which gave these words a legal definition is included in the Appendix of Cases at pages 40–48.

SIXTH POINT.

That provision of the supplement which made its acceptance optional with the Company clearly indicates the intent of the Legislature to make an irrepealable contract.

The Legislature, on the theory of opposing counsel, had the right, under the power of repeal reserved by the general act of 1846, to repeal absolutely the tax clause of the original charter imposing the tax only after six per cent. had been earned, and to impose the tax at once without any assent from the Company.

Why should they have given any option to the Company unless they deliberately intended to let it weigh for itself the relative advantages of remote taxation after earning capacity had been developed, subject to increase at the legislative will, or immediate taxation at a fixed rate which should never be increased, and to make its choice deliberately between these alternatives? What advantages were to be weighed and what reason for deliberation, if both methods of taxation were to be alterable at will by any succeeding legislature; for the supplement gave no privileges which the legislatures of that time were not accustomed to grant to any railroad company for the asking.

Why should the Company voluntarily give up complete immunity from all taxation until its investment proved remunerative and accept the burden of an immediate tax, if it was to be understood as a part of the bargain that the next legislature could raise that tax at its pleasure? For the State to give the option and for the Company to accept it was equally absurd unless both parties intended to make a contract for taxation which could not be altered.

SEVENTH POINT.

The consideration for this contract was substantial. It was not only the large annual sums paid by the company to the State, but the many millions of dollars invested on the faith of its franchises.

EIGHTH POINT.

That the supplement of 1854 created a contract is not denied.

There was no *express* reservation incorporated in it, subjecting it to "alteration, amendment, or repeal."

The only question then, is, is such a reservation, by implication, to be deduced from and exercised under the Act of 1846?

This Court has already decided that there was no such implication in the supplement to the Morris and Essex charter passed eleven years afterward.

NINTH POINT.

The decisions of the Supreme Court of the United States rendered since New Jersey *v.* Yard, 95 U. S., 104, on the question of legislative contracts for special taxation or tax exemption, have not limited or qualified the principles laid down in that case.

These decisions are—

Farrington *v.* Tennessee, 95 U. S., 679.

Railroad Co. *v.* Georgia, 98 U. S., 359.

University *v.* People, 99 U. S., 309.
Railway Co. *v.* Philadelphia, 101 U. S., 528.
Stone *v.* Mississippi, 101 U. S., 814.
Asylum *v.* New Orleans, 105 U. S., 362.
Louisville & Nashville R. R. Co. *v.* Palmer, 109 U. S., 244.
Picard *v.* East Tennessee, Virginia and Georgia R. R. Co., 130 U. S., 637.

All of these reaffirm the Dartmouth College case, which the Supreme Court of New Jersey would gladly reverse, and as to which Chief Justice Waite, in delivering the unanimous opinion of the Court, says:

"The doctrines of Trustees of Dartmouth College *v.* "Woodward (4 Wheaton, 518), announced by this Court "more than sixty years ago, have become so imbedded in "the jurisprudence of the United States as to make them "to all intents and purposes a part of the Constitution "itself."

Stone *v.* Mississippi, 101 U. S., 814.

All hold that stipulations for tax exemption or special taxation, if made for consideration and within constitutional limitation, are contracts within the principles laid down in the Dartmouth College case.

All insist that the language of the contract must be "so "clear and unmistakable as to leave no doubt of the pur- "pose of the legislature."

Picard *v.* R. R. Co., 139 U. S., 637.

All declare that where the "language is clear and the "intention to grant the exemption apparent the Court has "never hesitated to give it force and effect."

Asylum *v.* New Orleans, 105 U. S., 362.

An abstract of these decisions, is, for the convenience of the Court, contained in the Appendix of Cases, at pages 27–32.

Some decisions of the Court prior to that case on the same question, are, for the same purpose, contained in the Appendix at pages 32–39.

TENTH POINT.

There can be no question of jurisdiction.

For cases illustrating the principles upon which the jurisdiction of this Court has been upheld to determine whether and to what extent State legislation was impairment of the obligations of contracts, see Appendix of Cases, pages 39–41.

LAST POINT.

The judgment of the Court of Errors should be reversed.

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GEORGE R. KAERCHER,
B. WILLIAMSON,
Counsel for Plaintiff in Error.

APPENDIX OF CASES.

DECISIONS OF THE SUPREME COURT OF THE UNITED STATES ON LEGISLATIVE CONTRACTS FOR SPECIAL TAXATION OR TAX EXEMPTION SINCE NEW JERSEY *v.* YARD, 95 U. S., 104.

Farrington v. *Tennessee*, 95 U. S., 679.

In this case there was no constitutional limitation on the power of the Legislature to contract, no power of repeal reserved in the charter and no affirmative acceptance of the charter required.

The syllabus reads as follows:

"The charter of a bank granted by the Legislature of "Tennessee provides that the bank 'shall pay to the State "an exchange tax of one-half of one per cent. on each share "of the capital stock subscribed, which shall be in lieu of "all other taxes.' Held, 1. That this provision is a con-"tract between the State and the bank limiting the amount "of tax on each share of the stock."

Railroad Co. v. *Georgia*, 98 U. S., 359.

Two railroad companies, The Savannah, Albany and Gulf and The Atlantic and Gulf, had, by their charters, the one, "the privilege of immunity of not being subject to "be taxed higher than one-half of one per cent. upon the "net annual income," and the other, "on the net proceeds "of its investments." It does not appear that there was any constitutional limitation on the power of the Legislature to contract, or that there was any reserve power of repeal in these charters. No affirmative acceptance on the part of the companies was required.

The Court held that "if their rights are now the same as "they were when the original charters of the two com-"panies were granted, it is quite clear the provisions of

" the taxing act of 1874 (a general railroad tax law) could " not be applied to them without the impairment of the " contract they had with the State."

The stocks of the two companies in question, however, were consolidated into one in 1863, and the Court held this consolidation to be the creation of a new company, and that the charter of this new company was subject to alteration, because passed subsequent to and, therefore, subject to a code which provided, amongst other things, that corporations " are creatures of the law and, except so far as the " law forbids it, subject to be changed, modified or de- " stroyed at the will of the creator," and that " in all cases " of private charters hereafter granted, the State reserves " the right to withdraw the franchise unless such right is " expressly negatived in the charter."

University v. *People*, 99 U. S., 309.

The charter of the Northwestern University contained this clause:

" That all property of whatever kind or description be- " longing to or owned by said corporation shall be forever " free from taxation for any and all purposes."

There was no constitutional limitation upon the power of the Legislature to give the exemption. There was no affirmative act of the University required to accept the charter.

Held, to be a contract for perpetual exemption. In this case the Supreme Court construed the Constitution of Illinois against the decision of the Illinois State Court.

Railway Company v. *Philadelphia*, 101 U. S., 528.

The charter of a Philadelphia street railway company contained the following clause:

" The Company shall also pay such a license for each car " run by said Company as is now paid by other passenger " railway companies in said City."

The license then paid was $30. A subsequent ordinance increased it to $50. The company claimed that the above clause was a contract which could not be repealed and fixed the limit of the license fee at $30.

It was held that the language in question did not constitute a contract, and that, if it did, the Constitution of the State prevented its being irrepealable.

Mr. Justice Clifford delivered the opinion of the Court, which contains the following statement of the general principle:

"Stipulations in a statute of a State, exempting certain "property, rights, or franchises from taxation, or engaging "that the same shall be taxed only at a certain rate, if made "for a valuable consideration received by the State whose "Legislature enacted the stipulation, is a contract, and as "such comes within the rules of decision specifying the "description of contracts entitled to protection from modi- "fication or repeal under the guaranty of the tenth section "of the first article of the Constitution."

Exemptions of the kind, however, are to be strictly construed, the rule being that the right of taxation exists unless the exemption is expressed in clear and unambiguous terms, and that, to be effectual, it must appear that the contract was made in consequence of some beneficial equivalent received by the State, it being conceded that if the exemption was granted *only* as a privilege it may be recalled at the pleasure of the Legislature. Cooley, Const. Lim. (4th ed.), 342; Cooley, Taxation, 146.

Stone v. *Mississippi*, 101 U. S., 814.

Held, that it was not within the power of the Legislature to make an irrepealable contract with a lottery company because, by so doing, it limited the police power of the State.

The unanimous opinion of the Court, delivered by Chief Justice Waite, contains the following as to the Dartmouth

case and the decisions of the Supreme Court holding charter exemptions from taxation contracts:

"It is now too late to contend that any contract which a "State actually enters into when granting a charter to a "private corporation is not within the protection of the "clause in the Constitution of the United States that pro- "hibits States from passing laws impairing the obligation "of contracts. Art. 1, sect. 10. The doctrines of Trustees "of Dartmouth College *v.* Woodward (4 Wheat., 518), an- "nounced by this Court more than sixty years ago, have "become so imbedded in the jurisprudence of the United "States as to make them to all intents and purposes a part "of the Constitution itself.

"We have held, not, however, without strong opposition "at times, that this clause protected a corporation in its "charter exemptions from taxation. While taxation is in "general necessary for the support of government, it is not "part of the government itself. Government was not or- "ganized for the purposes of taxation, but taxation may be "necessary for the purposes of government. As such, tax- "ation becomes an incident to the exercises of the legiti- "mate functions of government, but nothing more. No "government dependent on taxation for support can bar- "gain away its whole power of taxation, for that would be "substantially abdication. All that has been determined "thus far is, that for a consideration it may, in the exercise "of a reasonable discretion, and for the public good, sur- "render a part of its powers in this particular."

Asylum v. *New Orleans*, 105 U. S., 362.

The charter contained the following clause:

"All property, real and personal, belonging to the insti- "tution, is hereby exempted from all taxation either by the "State, parish or city in which it is situated, anything in "the law to the contrary notwithstanding."

A cotton press was devised to it in 1874, on which a tax was assessed. There was a reserved right to dissolve the corporation and to forfeit its charter under a general law. There was no reservation in the charter of the right to alter

and amend. There was no formal acceptance of the charter required. The above clause was held to constitute a contract.

Mr. Justice Bradley, in giving the opinion of the Court, said:

"We are well aware of the forcible language which has "been used in previous cases in reference to the importance "to the State of the governmental function of taxation; the "caution that ought to be exercised in maintaining a "claimed exemption from taxes; the clearness and certainty "which the grant should exhibit. We concur in all that "has been said by this Court and many State Courts on the "subject. But where the language is clear, and the inten-"tion to grant the exemption apparent, the Court has never "hesitated to give it force and effect."

Louisville & Nashville v. *Palmer*, 109 U. S., 244.

The contract was contained in a general act for internal improvements, which provided that the property of the Railroad Company accepting the provisions of that act, "shall be exempt from taxation while the roads are under "construction and for the period of thirty-five years from "their completion."

The Legislature, in 1872, passed a law giving this exemption to the P. & L. R. R. Co., assignee of the Alabama and Florida. There was no assent required. There was no express power to repeal reserved in the act, but the Constitution of 1868 forbade the exemption.

Held, that the Legislature of Florida, after the adoption of that Constitution, could not make a grant to a railroad exempting their property from taxation. Opinion by Matthews, *J.*

Picard v. *East Tennessee, Virginia and Georgia R. R. Co.*, 130 U. S., 637.

The question in this case was whether a contract for tax exemption conceded to exist before foreclosure passed to

a corporation organized by the purchasers after foreclosure sale.

The Court held that it did not pass, and, in so holding, used the following language:

"It has been held, and the doctrine has been so often repeated that it is no longer an open question, that the "Legislature of a State may exempt the property of particular persons or corporations from taxation, either for a "limited period or perpetually; but to justify the conclusion that such exemption is granted, it must appear by "the language so clear and unmistakable as to leave no "doubt of the purpose of the Legislature. The power of "taxation is one of the highest attributes of sovereignty, "and the suspension of its exercise as to any persons or "property is not a matter to be presumed or inferred. It "must be declared or it will not be deemed to exist. If "the Legislature can lay aside a power devolved upon it "for the good of the whole people of the State, for the "benefit of a private party, it must speak in such unmistakable terms that they will not admit of any reasonable "construction consistent with the reservation of the "power."

Decisions of the Supreme Court of the United States on Legislative Contracts for Special Taxation or Tax Exemption prior to New Jersey *v.* Yard, 95 U. S., 104.

Wilmington Railroad *v.* Reid, Sheriff, 13 Wallace, 264, 266:

1. A statute exempting all the property of a railroad corporation from taxation, exempts not only the rolling stock and real estate owned by it and required by the company for the successful prosecution of its business, but its franchise also.

2. A charter to a railroad company, containing such an exemption, is a contract; and a law subsequently passed,

laying a tax on the company's franchise, rolling stock or real property, violates the obligation of the contract and is void.

"It has been so often decided by this Court that a charter "of incorporation granted by a State creates a contract be- "tween the State and the corporators, which the State can- "not violate, that it would be a work of supererogation to "repeat the reasons on which the argument is founded. It "is true that when a corporation claims an exemption from "taxation it must show that the power to tax has been "clearly relinquished by the State, and if there be a reason- "able doubt about this having been done, that doubt must "be solved in favor of the State. If, however, the contract "is plain and unambiguous, and the meaning of the parties "to it can be clearly ascertained, it is the duty of the Court "to give effect to it, the same as if it were a contract be- "tween private persons, without regard to its supposed in- "jurious effects upon the public interests.

"It may be conceded that it were better for the interest "of the State that the taxing power, which is one of the "highest and most important attributes of sovereignty, "should on no occasion be surrendered. In the nature of "things the necessities of the Government cannot always "be foreseen, and in the changes of time, the ability to raise "revenue from every species of property may be of vital "importance to the State, but the Courts of the country "are not the proper tribunals to apply the corrective to "improvident legislation of this character. If there be no "constitutional restraint on the action of the Legislature "on this subject, there is no remedy, except through the in- "fluence of a wise public sentiment. reaching and control- "ling the conduct of the law-making power."

Humphrey *v.* Pegues, 16 Wallace, 244, 249;

An act of Assembly of a State passed in 1851 to incorporate a railroad company chartered a corporation, but did not exempt its property from taxation. An act passed in 1855 to amend its CHARTER did exempt it. In

1863 an act was passed conferring on a company which had been incorporated in 1849 the right to build a railroad, but which had never yet found inducements sufficient to make it build the road, all the rights, powers and privileges "granted by the CHARTER" of the first named road. Held:

1st. That the property of the second road was made, by the Act of 1863, exempt from taxation.

2d. That the Legislature could not repeal the Act of 1863 so as to subject it to taxation.

"Another question is raised, to wit: That a legislature "does not possess the power to grant to a corporation a per- "petual immunity from taxation. It is said that the power "of taxation is among the highest powers of a sovereign "State; that its exercise is a political necessity, without "which the State must cease to exist, and that it is not com- "petent for one Legislature by binding its successors, to "compass the death of the State. It is too late to raise this "question in this Court. It has been held that the Legisla- "ture has the power to bind the State in relinquishing its "power to tax a corporation. It has been held that such a "provision in the charter of an incorporation constitutes a "contract which the State may not subsequently impair. "These doctrines have been reiterated and reaffirmed so re- "cently as the year 1871, in an opinion delivered by Justice "Davis in the case of THE WILMINGTON RAILROAD *v.* REID. "They must be considered as settled in this Court."

The Piqua Branch of the State Bank of Ohio *v.* Jacob Knoop, Treasurer of Miami County, 16–17 Howard, 369:

In 1845 the Legislature of Ohio passed a general banking law, the fifty-ninth section of which required the officers to make semi-annual dividends, and the sixtieth required them to set off six per cent. of such dividends for the use of the State, which sum or amount so set off should be in lieu of all taxes to which the company, or the stockholders therein, would otherwise be subject.

This was a contract fixing the amount of taxation, and not a law prescribing a rule of taxation until changed by the Legislature.

In 1851 an act was passed entitled "An Act to tax banks, and bank and other stocks, the same as property is now taxable by the laws of this State." The operation of this law being to increase the tax, the banks were not bound to pay that increase.

A municipal corporation, in which is vested some portion of the administration of the government, may be changed at the will of the Legislature. But a bank, where the stock is owned by individuals, is a private corporation. Its charter is a legislative contract, and cannot be changed without its assent.

The preceding cases upon this subject, and the case of the PROVIDENCE BANK *v.* BILLING, 4 Peters, 561, explained.

Gordon *v.* Appeal Tax Court, U. S. Reports, 3 Howard, 133:

The Legislature of Maryland, in 1821, continued the charters of several banks to 1845, upon condition that they would make a road and pay a school tax. This would have exempted their franchise, but not their property, from taxation.

But another clause of the law provided, that upon any of the aforesaid banks accepting of and complying with the terms and conditions of the act, the faith of the State was pledged not to impose any further tax or burden upon them during the continuance of their charters under the act.

This was a contract relating to something beyond the franchise, and exempted the stockholders from a tax levied upon them as individuals, according to the amount of their stock.

The charter of a bank is a franchise, which is not taxable

as such, if a price has been paid for it, which the Legislature accepted.

But the corporate property of a bank is separable from the franchise, and may be taxed, unless there is a special agreement to the contrary.

McGee *v.* Mathis, 4 Wallace, 143:

Where a State, in order to promote the drainage and sale of certain swamp lands belonging to it and which it was desirous of reclaiming, has passed, by way of encouraging purchasers, a law that such lands "shall be exempt from taxation for the term of ten years," and issued transferable scrip receivable for them, a repeal of the exemption act, so far as it concerns lands paid for, either before or after the repeal, with scrip issued before the repeal, impairs a contract of the State with the holders of such scrip.

Home of the Friendless *v.* Rouse, 8 U. S. Reports, pp. 430, 437, 438:

1. A statute which, for the declared purpose "of encouraging the establishment of a charitable institution" and enabling the parties thus engaged "more fully and effectually to accomplish their laudable purpose," gave to the institution a charter, and declared by it that "the property of said corporation shall be exempt from taxation," and that an already existing statutory provision, that every charter of incorporation should be subject to alteration, suspension or repeal, at the discretion of the Legislature, should not apply to it, becomes, after the corporation has been organized, a contract; and its property is not subject to taxation, so long as the corporation owns it and applies it to the purposes for which the charter was granted.

2. A State which, after granting such a charter, passes a law taxing property of the corporation, passes a law violat-

ing the obligation of the contract, and consequently such a law is void under the Constitution.

"There is no necessity of looking for the consideration for "a legislative contract outside of the objects for which the "corporation was created. These objects were deemed by "the Legislature to be beneficial to the community, and this "benefit constitutes the consideration for the contract, and "no other is required to support it. This has been the well-"settled doctrine of this Court on this subject since the case "of DARTMOUTH COLLEGE *v.* WOODWARD.

"It is contended that the rules of construction applicable "to legislative contracts are more stringent than those which "are applied to contracts between natural persons, and that, "applying these rules to this contract, it cannot be sustained "as a perpetual exemption from taxation.

"It is true that legislative contracts are to be construed "most favorably to the State if, on a fair consideration to be "given the charter, any reasonable doubts arise as to their "proper interpretation; but, as every contract is to be con-"strued to accomplish the intention of the parties to it, if "there is no ambiguity about it, and this intention clearly "appears on reading the instrument, it is as much the duty "of the Court to uphold and sustain it as if it were a con-"tract between private persons. Testing the contract in "question by these rules, there does not seem to be any "rational doubt about its true meaning. 'All property of "said corporation shall be exempt from taxation,' are the "words used in the act of incorporation, and there is no need "of supplying any words to ascertain the legislative inten-"tion. To add the word 'forever' after the word 'taxation,' "could not make the meaning any clearer. It was undoubt-"edly the purpose of the Legislature to grant to the cor-"poration a valuable franchise, and it is easy to see that the "franchise would be of comparatively little value if the "Legislature, without taking direct action on the subject, "could at its will resume the power of taxation.

"The validity of this contract is questioned at the bar, on "the ground that the Legislature had no authority to grant "away the power of taxation. The answer to this position

"is, that the question is no longer open for argument here, "for it is settled by the repeated adjudications of this Court "that a State may, by contract based on a consideration, "exempt the property of an individual or corporation from "taxation, either for a specified period or permanently. And "it is equally well settled that the exemption is presumed to "be on sufficient consideration, and binds the State if the "charter containing it is accepted."

Binghamton Bridge, 3 Wall., 51, 73:

"The constitutional right of one legislature to grant cor- "porate privileges and franchises so as to bind and conclude "a succeeding one, has been denied. We have supposed, if "anything was settled by an unbroken course of decisions "in the Federal and State Courts, it was that an act of in- "corporation was a contract between the State and the "stockholders. All courts at this day are estopped from "questioning the doctrine. The security of property rests "upon it, and every successful enterprise is undertaken in "the unshaken belief that it will never be forsaken.

"A departure from it now would involve dangers to "society that cannot be foreseen, would shock the sense of "justice of the country, unhinge its business interests and "weaken, if not destroy, that respect which has always "been felt for the judicial department of the Government. "An attempt even to reaffirm it could only tend to lessen its "force and obligation. It received its ablest exposition in "the case of Dartmouth College *vs.* Woodward, which case "has ever since been considered a landmark by the profes- "sion, and no court has since disregarded the doctrine that "the charters of private corporations are contracts pro- "tected from invasion by the Constitution of the United "States. * * *

"The principle is supported by reason as well as author- "ity. It was well remarked by the Chief Justice in the "Dartmouth College case, 'that the objects for which a "corporation is created are universally such as the Govern- "ment wishes to promote. They are deemed beneficial to "the country, and this benefit constitutes the consideration, "and, in most cases, the sole consideration for the grant.'

" The purposes to be attained are greatly beyond the ability
" of individual enterprise, and can only be accomplished by
" the aid of associated wealth. This will not be risked un-
" less privileges are given and securities furnished in the act
" of incorporation. The wants of the public are often so
" imperative that a duty is imposed on Government to pro-
" vide for them, and as experience has proved that a State
" should not directly attempt to do this, it is necessary to
" confer on others what the sovereign power is unwilling to
" undertake. The Legislature, therefore, says to public-
" spirited citizens: 'If you will embark with your time,
" money and skill in an enterprise which will accommodate
" the public necessities, we will grant to you privileges that
" will justify the expenditure of your money and the em-
" ployment of your time and skill.' Such a grant is a con-
" tract, with mutual considerations, and justice and good
" policy alike require that the protection of the law should
" be assured to it."

THE PRINCIPLES UPON WHICH THE JURISDICTION OF THE SUPREME COURT HAS BEEN UPHELD, TO DETERMINE WHETHER, AND TO WHAT EXTENT, LEGISLATION BY THE SEVERAL STATES IMPAIRED THE OBLIGATIONS OF CONTRACTS.

New Orleans Water Works *vs.* Louisiana Sugar Company, 125 U. S., 18, 38:

" When the State court decides against a right claimed
" under a contract, and there was no law subsequent to the
" contract, this Court clearly has no jurisdiction. When the
" State court holds that there was a contract conferring cer-
" tain rights, and that a subsequent law did not impair those
" rights, this Court has jurisdiction to consider the true con-
" struction of the supposed contract, and if it is of opinion
" that it did not confer the rights affirmed by the State court,
" and therefore its obligation was not impaired by the subse-
" quent law, may, on that ground, affirm the judgment. So
" when the State court upholds the subsequent law, on the
" ground that the contract did not confer the right claimed,

" this Court may inquire whether the supposed contract did " not give the right, because if it did the subsequent law " cannot be upheld."

Jefferson Branch Bank *vs.* Skelly, 1 Black, 436:

" It is the general rule that the construction given by State " courts to State laws and constitutions is binding and con- " clusive upon the Federal courts; but the rule does not ex- " tend to cases in which the court is called on to interpret " the contracts of States, though they may have been made " in the form of laws or by functionaries of the State in pur- " suance of State laws. Fidelity to the Constitution of the " United States makes it necessary that in such a matter this " Court should not follow the construction of a State court " with whose opinion it cannot concur, and it makes no dif- " ference in the obligation whether the contract is in shape " of a law or of a covenant by the State's agents."

Louisville and Nashville R. R. Co. *vs.* Palmes, 109 U. S., 244, 256:

" The question we have to consider and decide is whether, " in the judgment under review, the Supreme Court of " Florida gave effect to a law of the State, which, in violation " of the Constitution of the United States, impairs the obli- " gation of a contract. In reaching a conclusion on that " point, we decide for ourselves, independently of the de- " cision of the State court, whether there is a contract; " and whether its obligation is impaired; and if the decision " of the question requires a construction of State Constitu- " tion and laws we are not necessarily governed by pre- " vious decisions of the State courts upon the same or " similar points, except when they have been so firmly es- " tablished as to constitute a rule of property."

Planters' Bank *vs.* Sharp, 6 How., 327:

" One of the tests that a contract has been impaired is, " that its value has by legislation been diminished. It is not " by the Constitution to be impaired at all. This is not a " question of degree, or manner, or cause, but of encroach-

" ing in any respect on its obligation, dispensing with any " part ofits force."

McCracken *vs.* Hayward, 2 How., 608, 612:

" The obligations of a contract consists in its binding " force on the party who makes it. This depends on the " laws in existence when it is made; these are necessarily " referred to in all contracts, and forming a part of them as " the measure of the obligation to perform them by the one " party, and the right acquired by the other. There can be " no standard by which to ascertain the extent of either than " that which the terms of the contract indicate, according " to their settled meaning; when it becomes consummated, " the law defines the duty and the right; compels one party " to perform the thing contracted for and gives the other " the right to enforce the performance by the remedies then " in force. If any subsequent law affects to diminish the " duty or to impair the right, it necessarily bears on the " obligation of the contract in favor of one party, to the " injury of the other: hence, any law which in its operation " amounts to a denial or obstruction of the rights accruing " by a contract, though professing to act only on the " remedy, is directly obnoxious to the prohibition of the " Constitution."

Green *vs.* Biddle, 8 Wheat., 1, at page 84:

" The objection to a law, on the ground of its impairing " the obligation of a contract, can never depend upon the " extent of the change which the law effects in it. Any " deviations from its terms, by postponing or accelerating " the period of performance which it prescribes, imposing " conditions not expressed in the contract, or dispensing " with the perform ance of those which are, however " minute, or apparently immaterial in their effect upon the " contract of the parties, impairs its obligation."

DECISIONS OF THE NEW JERSEY COURTS BEFORE AND ABOUT THE TIME WHEN THE CENTRAL'S CONTRACT WAS ENACTED CONSTRUING SIMILAR STATUTES TO BE IRREPEALABLE CONTRACTS.

State *v.* Berry, 2 Harrison, 80 (139):

The charter of the Paterson and Hudson River Railroad Company provided for the payment of certain taxes to the State, and then enacted "that no further or other tax or "impost shall be levied or assessed upon said company."

Held, that this does not exempt the franchise or privileges merely of the company, but the company generally in its property from taxes for county, township and all other purposes than those stated in the charter.

"The 18th section of the act of incorporation provides "that the said company shall, after the expiration of five "years from the passage of this act, pay to the Treasurer of "this State, yearly and every year, a tax of one-quarter of "one per cent. upon their capital stock paid in, and yearly "and every year after the expiration of ten years, a tax "of one-half of one per cent. upon their capital stock so paid "in, 'and that no further or other tax or impost shall be "levied or assessed upon said company.'

"It is contended by counsel, that the exemption contained "in the last clause of this section, applies merely to the "*franchise* granted to the company, and not to its property; "but this certainly cannot be the true construction of the "act. To take away the inherent and all important right "of government, to levy tax upon property for its support, "the language should certainly be clear and explicit (4 "Peters, 514). But could words have been adopted less "liable to doubt than such as are here used? I think not. "It is enacted that the company after, &c., shall pay yearly "a tax, &c., upon the *capital* stock paid in, and that no "further or other tax or impost shall be levied or assessed "upon said company. Here is a tax laid upon stock, or, "in other words, upon property which it, the company, is "directed to pay. And in the same connection, it is added,

" that no other tax or impost shall be levied or assessed " upon the company.

" *The Legislature could never, after the passage of the act,* " *have imposed any new or additional tax upon the company for* " *its franchises or privileges.*

" Its charter was in the nature of a contract, and the " State would have had no constitutional power thus to " vary its terms, or add to its burthens. Unless, there- " fore, the exemption applied to the property of the com- " pany, it had no application. A statute ought upon the " whole, to be so construed, that if possible, no clause, " sentence or word, should be superfluous, void or insigni- " ficant (4 Bac. Abr., Tit. Statutes, I., p. 664; I. Harr. R., " 286). There can be no doubt, I think, but that in this " case, and in many others where the charters of these " companies contain a like provision, the Legislature in- " tended to exempt, and have exempted, in so many words, " both the Company and its property, from any other tax " than as therein stated."

Camden and Amboy Railroad Company *v.* Hillegas, 3 Harrison, 11 (1840):

The charter of the Camden and Amboy R. R. Co., after providing for the payment of a tax to the State Treasurer, declared " that no other tax or impost shall be levied or as- " sessed upon the company."

Held, that this language exempted the company from any tax for State, county or township purposes. The reasoning of the Court is as follows:

" SECONDLY, It is objected, that the Camden and Amboy " Railroad Company are exempted by their charter from " taxation for state, county and township purposes. And,

" This exception, too, is fully sustained, upon the prin- " ciples unanimously adopted by this Court in The State *v.* " Berry *et al.*, 2 Harr. R., 80. In that case, the liability of " the Paterson and Hudson River Railroad Company, to " taxation for township and county purposes was drawn in

" question; and as the exempting clause, in the charter of
" that company, is precisely (with the exception of one or
" two immaterial words) in the same language with that
" used in the charter of this company; the decision must be
" the same as in that case. In the charter of the Paterson
" and Hudson River Railroad Company, Harr. Comp., 326,
" sec. 18, the words are: 'And that no *further* or other tax
" or impost shall be levied or assessed upon the said com-
" pany.' In the charter of the Camden and Amboy Railroad
" Company, Harr. Comp., 292, sec. 23, the language is:
" 'and that no other tax or impost shall be levied or as-
" 'sessed upon the said company.' It is true, the consid-
" erations upon which the Legislature have granted these
" exemptions are different in the two cases. In the former
" the company are required to pay to the Treasurer of the
" State a yearly 'tax' of a certain per cent. 'upon their
" 'capital stock paid in,' and in the latter case the company
" are to pay to the Treasurer of the State, quarterly, ten
" cents for each passenger and fifteen cents for each ton of
" merchandise transported upon the road. But this differ-
" ence can have no possible influence that I can perceive,
" in giving a construction to the exemption clauses in the
" two statutes. The question was very ably argued, and
" the liability of the Paterson and Hudson River Railroad
" Company to taxation in the case cited from 2 Harr. R.,
" 80, was pressed upon the Court with great ingenuity, by
" the counsel who argued in support of the tax; but after
" full advisement we were as the report shows, all of opinion
" that the company were not liable to taxation in that man-
" ner. One idea, however, not suggested on that argument,
" so far as I now recollect, was thrown out, and, indeed,
" earnestly urged upon our attention, by the counsel for
" the defendants in this case, that struck me at first as some-
" what plausible, it was this: that inasmuch as the consid-
" eration for the exemption, or rather the sums to be paid
" as a commutation for ordinary taxes, were all to be paid
" into the State Treasury; that therefore the Legislature
" could only have intended an exemption from State taxes;
" that such a limitation would satisfy the general language
" of the exempting clause; and that the Court ought not, by

" mere construction, to extend its operation so far as to de-
" prive the townships and counties through which the road
" runs, or in which the company had taxable property, from
" raising by taxes, the revenues necessary for defraying their
" municipal expenses, and for which they had no other
" resources; though compelled by law to maintain their
" peculiar and local governments. But there are two satis-
" factory answers to this suggestion. In the first place, such
" a limited or qualified exemption from 'taxes' and "im-
" posts' would not satisfy the broad and comprehensive
" language of the act. It does not say, no other State tax;
" but '*no other* tax or impost shall be levied," &c. And sec-
" ondly, the argument assumes the position, that State taxes
" are essentially different from county and township taxes,
" and that they are assessed and collected under different
" authorities. This is not so. The same law that directs cer-
" tain sums of money to be assessed and collected for State
" purposes, authorizes and requires moneys to be assessed
" and collected for township and county-purposes. All taxes
" are, in fact, State taxes; they are raised under the author-
" ity of the State, and are all applied to State purposes;
" namely, to the support of government in all its departments;
" to the payment of its officers and agents, the erection and
" maintenance of public buildings, roads and bridges, and the
" support of the poor. . They are not different taxes; but they
" are taxes, levied by the same authority, though distribu-
" ted into different channels for the sake of public conveni-
" ence."

Camden & Amboy R. R. & T. Co. *v.* Commissioners of Appeal, 3 Harrison, 71:

Construes the same clause of the C. & A. R. R. & T. Co. charter to prevent the legal assessment of any county or township tax.

The Court uses the following language:

" The 23d section of the charter lays a tax and then pro-
" vides that "no other tax shall be imposed." Now, the

"$21.20 (the amount of the township tax inquestion) not "being the same tax, is necessarily another."

Gardner, Assessor of Jersey City, *v.* The State, 1 Zab., 557:

The charter of the Paterson and Hudson River Railroad Company provided for the payment of certain tax to the State, and then enacted "that no further or other tax or impost should be levied or assessed upon the said company."

Held, that this provision of the charter exempted the company and its property held for railroad purposes from all other taxes, whether assessed for State, for city or township purposes.

The State, Camden & Amboy Railroad & Transportation Company, Prosecutors, *v.* Commissioners of Mansfield, 3 Zabriskie, 510 (1852):

The charter of the Camden and Amboy Railroad and Transportation Company, after making provision for the payment of transit duties, enacts "that no other tax or im-"post shall be levied or assessed against the said company."

This clause was construed to operate as an exemption of the property in the hands of the corporation and the stock of the company in the hands of the stockholders from any other taxation than that provided for in the charter. The rule as to what property is to be included in this charter provision held to be "where the necessity ends and the mere convenience begins."

The Legislature, in exempting the company from all other taxes except the transit duties, only intended to include so

much property as was necessary and essential to a railroad and the transportation business such as the company was compelled to carry on.

Dwelling houses and lots for the accommodation of workmen are not included in this exemption.

The State *v.* Betts, 4 Zab., 555:

The exemption of the Morris Canal and Banking Company, section 14 of their charter, enacts "that no state, "county, township or other public assessments or charges "whatsoever shall at any time be laid or imposed upon the "company or upon the stocks or estates which may become "vested in them under this act, but this exemption shall not "extend to any other estate or property of the company "than such as is possessed, occupied and used by the said "company for the actual and necessary purposes of canal "navigation under this act, according to the true intent and "meaning thereof."

Held, to constitute an irrepealable contract as to an extension authorized by supplement to the charter which gave to the extension all the privileges conferred by the original charter.

The State, The New Jersey Railroad & Transportation Company, Prosecutors, *v.* City of Newark, 3 Dutcher 185:

The charter of the Railroad Company provided that it should pay a tax of one-half of one per cent. upon its capital stock, "and that no other or further tax or imposition shall be levied or imposed upon the company."

This case involved the question whether an assessment

for improvements incident to the opening and widening of streets was a tax or impost within the meaning of the charter. In discussing this question, the Court used the following language:

"The exceptions in the charter of the New Jersey Rail-
"road and Transportation Company, and other similar
"charters granted by the Legislature of this State, are con-
"nected with, and partly in consideration of provisions for
"the payment by the companies of specified taxes into the
"State treasury, and have been held by our courts to in-
"clude not only taxes imposed expressly for State purposes,
"but all county, township or city taxes."

The State, The Trenton Water Power Company *v.* Parker, 3 Vr., 426:

Exemption clause in charter of the Water Company:

"And it shall be lawful for the council and general
"assembly of this State, at any time hereafter, to levy a tax
"on the company hereby incorporated, not exceeding the
"half of one per cent. upon its capital stock subscribed and
"paid in."

No consideration, and no assent required.

Held, not to be a contract and not to prevent taxation of the corporation under the general tax act of 1866.

The opinion in this case, given by Depue, *J.*, arrives at this construction of the Water Power charter by reference to cotemporary legislation, viz., the charter of The Elizabethtown & Somerville R. R. Co., The Paterson & Hudson River R. R. Co., The Delaware & Raritan Canal Company, The Camden & Amboy Railroad Company, The New Jersey Railroad & Transportation Company and the New Jersey, Hudson & Delaware Railroad Company, each of which contained a proviso of exemption from other taxes and imposts, similar to that contained in the Central Rail-

road Supplement. As to these charters, the Judge uses the following language:

"In each of these charters a certain annual sum is re-
" quired to be paid by the company to the State, either at
" once or after a specified period or event, and words of
" express exemption from other taxation are annexed."

"These provisions in the charters of the companies re-
" ferred to embrace all the elements of a contract—a con-
" sideration—the payment, or agreement to pay to the State
" certain sums annually, and express words of agreement on
" the part of the State to accept the same in lieu of ordinary
" taxation."

State, The United Railroad & Canal Company *v.* Commissioner of Railroad Taxation, 8 Vr., 240 (1874), S. C.:

Held, that the act of 1869, Laws of 1869, p. 226, when accepted by the directors of the Railroad Company, constituted a new contract as to taxation, which was irrepealable, and that the general railroad tax law of 1873 was not an act of uniform taxation within the meaning of the act of 1869.

This case contains an important decision of Depue, *J.*, going into the question of contracts by charter, and upholding the doctrine of irrepealable contracts.

This opinion contains the following statement of the general principle:

"A contract with a corporation, once made, is the same
" as a contract with an individual. Both are equally within
" the protection of the constitutional provision. Neither
" can be impaired except by compact and agreement of the
" parties, founded on a sufficient consideration, and the
" original obligation remains intact, except so far as altered
" by mutual consent.

"The contract the prosecutors rely on is an agreement
" on their part to pay a per cent. on capital stock, together
" with certain transit duties, and an agreement on the part

" of the State that no other tax or impost shall be levied or
" assessed upon them; in other words, that they should not
" be subject to general taxation in any form at the will of
" the Legislature. Corporations having contracts of this
" character with the State, may consent to other taxation,
" or to a different mode of assessment from that specified
" in their charters, by the acceptance of subsequent legisla-
" tive acts, without impairing the general exemption in
" their charters. In such event, the new taxation, or new
" mode of assessment, becomes a part of the original con-
" tract, and modified its terms to that extent, leaving the
" restriction therein on further taxation in full force."

APPENDIX OF LAWS.

1847.

CHARTER AND SUPPLEMENTS

OF THE

Central Railroad Company of New Jersey,

(Formerly Somerville and Easton Railroad Company.)

AN ACT TO INCORPORATE THE SOMERVILLE AND EASTON RAILROAD COMPANY.

APPROVED FEBRUARY 26, 1847.

Names of corporators and style of incorporation.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That Garrett D. Wall, Thomas A. Hartwell, William Thomson, John O. Sterns, John Kean, George H. Pegram and William P. Robeson, and such other persons as may hereafter be associated with them, shall be and are hereby ordained, constituted and declared to be a body corporate and politic, in fact and in name, by the name* of "The Somerville and Easton Railroad Company," and shall be capable of purchasing, holding and conveying any lands, tenements, goods and chattels whatsoever, necessary or expedient for the objects of this incorporation.

Amount of capital stock.

2. *And be it enacted*, That the amount of the capital stock of said company shall be twelve hundred thousand dollars, with liberty to increase the same to two millions of dollars,† and shall be divided into shares of fifty dollars each,‡ which

* For change of name, see page 14, section 3.

† For increase of capital to $5,000,000, see page 17, section 2.

‡ For authority to change the value of shares to $100, see page 17 section 2.

shall be deemed personal property, and transferable in such manner as the said corporation shall by their by-laws direct.

Books to be opened.

3. *And be it enacted*, That the above-named persons may open books to receive subscriptions to the capital stock of said corporation, at such time or times, and place or places, as they, or a majority of them, may think proper; and as soon as the same shall be subscribed, to give notice for a meeting of the said stockholders, to choose nine directors; and such election shall be made at the time and place appointed by such of the stockholders as shall attend for that purpose, either in person or by lawful proxy, each share of the capital stock entitling the holder thereof to one vote, and the said above-named persons, or a majority of them, shall be inspectors of the first election of directors of the said corporation, and shall certify, under their hands, the names of those persons duly elected, and deliver over the subscription books to the said directors; and the time and place of holding the first meeting of the directors shall be fixed by the said persons named in the first section of this act, or a majority of them; and the directors chosen at such meeting, or at the annual elections of said corporation, shall, as soon as may be, after every election, choose out of their own number a president; and in case of the death, resignation or removal of the president, or any director, such vacancy or vacancies may be filled for the remainder of the year wherein they may happen, by the said board of directors, or a majority of them; and in case of the absence of the president, the said board of directors, or a majority of them, may appoint a president *pro tempore*, who shall have such power and functions as the by-laws of the said corporation shall provide.

First meeting of stockholders to choose directors.

President to be chosen and vacancies filled by board.

Directors to continue in office till others are elected.

4. *And it be enacted*, That in case it should happen that an election of directors should not be made during the day when, pursuant to this act, it ought to be made, the said corporation shall not, for

that cause, be deemed to be dissolved, but such election may be held at any other time; and the directors for the time being shall continue to hold their office until new ones shall have been chosen in their places.

Quorum of directors and their powers.

5. *And be it enacted*, That five directors of said corporation shall be competent to transact all business of the said corporation, and they shall have power to call in the capital stock of said company, by such instalments, and at such times as they may direct, and in case of the non-payments of said instalments, or any one of them, to forfeit the share or shares upon which such default shall arise; and to make and prescribe such by laws, rules and regulations as to them shall appear needful and proper, touching the management and regulation of the stock, property, estate and effects of the said corporation; and also shall have power to appoint a secretary and so many clerks and servants as to them shall seem meet, and to establish and fix such salaries to them, and also to the president, as to the said board shall appear proper.

Route of road defined that may be surveyed and constructed.

6. *And be it enacted*, That the president and directors of the said company be, and they are hereby authorized and invested with all the rights and powers necessary and expedient to survey, lay out and construct a railroad, or lateral roads, from one or more suitable place or places in the village of Somerville, northerly, in the most direct and feasible route, to the Musconetcong Valley, passing to the north, or within two miles of the village of Clinton, in the county of Hunterdon; thence passing down the valley of the Musconetcong, or any valley northward, to the valley of the river Delaware; thence, up the Delaware, to one or more suitable place or places within two miles of the Easton Delaware Bridge, opposite to the village or borough of Easton, in the State of Pennsylvania, with a branch from any convenient point on the route of said road to the village of Belvidere, in the County of Warren, not

exceeding one hundred feet in width,* with as many sets of tracks and rails as they may deem necessary; and it shall and may be lawful for the said president and directors, their agents, engineers, superintendents, or others in their employ, to enter at all times upon all lands and waters, for the purpose of exploring, surveying, leveling, or laying out the route or routes of such railroad, or lateral and branch roads, and of locating the same, and to do and erect all necessary works, buildings and appendages thereof, doing no unnecessary injury to private or other property; and when the route or routes of such road, or lateral and branch roads shall have been determined upon, and a survey of such route or routes deposited in the office of the Secretary of State, then it shall be lawful for the said company, by its officers, agents, engineers, superintendents, contractors, workmen and other persons in their employ, to enter upon, take possession of, hold, have, use, occupy and excavate any such lands, and to erect embankments, bridges, ferries, and all other works necessary to lay rails, and to do all other things which shall be suitable or necessary for the completion or repair of the said road or roads, subject to such compensation as is hereinafter provided; *provided always*, that the payment or tender of the payment of all damages for the occupancy of lands through which the said railroad or railroads may be laid out, be made before the said company, or any person under their direction or employ, shall enter upon or break ground in the premises, except for the purpose of surveying and laying out said road or roads, unless the consent of the owner or owners of such lands be first had and obtained; *provided nevertheless*, that the said road or lateral roads shall in no way impair the chartered rights, or interfere with the Camden and Amboy Railroad and Transportation Company, and Delaware and Raritan Canal Company, in the transportation of passengers or merchandise between Phila-

Right of entry on lands to survey and locate.

Right to hold lands for construction.

Proviso.

Proviso.

* As to additional width for slopes and embankments, see page 18, section 6.

delphia and New York, whereby to diminish the revenue of this State, under the penalty of a forfeiture of its chartered rights and franchises.

How lands to be obtained, when company cannot agree with owners.

7. *And be it enacted*, That when the said company or its agents, cannot agree with the owner or owners of such required lands or materials, for the use or purchase thereof, or when, by reason of the legal incapacity or absence of such owner or owners, no such agreement can be made, a particular description of the land or materials so required for the use of the said company, in the construction of the said road, shall be given in writing, under the oath or affirmation of some engineer or proper agent of the company, and also the name or names of the occupant or occupants, if any there be, and of the owner or owners, if known, and their residence, if the same can be ascertained, to one of the justices of the Supreme Court of this State, who shall cause the said company to give notice thereof to the persons interested, if known and in this State, or if unknown or out of this State to make publication thereof, as he shall direct, for any term not less than six days, and to assign a particular time and place for the appointment of the commissioners hereinafter named; at which time, upon satisfactory evidence to him of the service or publication of such notice aforesaid, he shall appoint, under his hand and seal, three disinterested, impartial and judicious freeholders, not resident in the county in which the lands or materials in controversy lie, or the owners reside, commissioners to examine and appraise the said lands and materials, and to assess the damages, upon such notice to be given to the persons interested, as shall be directed by the justice making such appointment, to be expressed therein, not less than six days; and it shall be the duty of the said commissioners (having first taken and subscribed an oath or affirmation before some person duly authorized to administer an oath, faithfully and impartially to examine the matter in question, and to make a true report according to the

Appointment of commissioners to appraise damage.

best of their skill and understanding) to meet at the time and place appointed, and proceed to view and determine the said land or materials, and to make a just and equitable estimate or appraisement of the value of the same, and assessment of damages, as shall be paid by the said company for such lands or materials and damages aforesaid; which report shall be made in writing, under the hands and seals of the said commissioners, or any two of them, and filed within ten days thereafter, together with the aforesaid description of the land or materials, and the appointment and oaths or affirmations aforesaid, in the clerk's office of the county in which the land or material, are situate, to remain of record therein; which report or a copy thereof, certified by the clerk of said county, shall at all times be considered as plenary evidence of the right of the said company to have, hold, use, occupy, possess and enjoy the said land or materials, or of the said owner or owners to recover the amount of said valuation, with interest and costs, in an action of debt in any court of competent jurisdiction, in a suit to be instituted against the company, if they shall neglect or refuse to pay the same for twenty days after demand made of their treasurer, and shall, from time to time, constitute a lien upon the property of the company in the nature of a mortgage; and the said justice of the Supreme Court shall, on application of either party, and on reasonable notice to the others, tax and allow such costs, fees and expenses to the justice of the Supreme Court, commissioners, clerks and other persons performing any of the duties prescribed in this section of this act, as they or he shall think equitable and right, and to order and direct by whom the same shall be paid, under the circumstances of the case.

Commissioners' report to be filed.

Costs by whom paid.

How report of commissioners may be set aside.

8. *And be it enacted*, That in case the said company, or the owner or owners of the said land or materials, shall be dissatisfied with the report of the commissioners named in the preceding section, and

shall apply to the justices of the Supreme Court, at the next term after the filing of the said report, the court shall have the power, upon good cause shown, to set the same aside, and thereupon to direct a proper issue for the trial of the said controversy, to be formed between the said parties, and to order a jury to be struck, and a view of the premises or materials to be had, and the said issue to be tried at the next Circuit Court to be holden in the said county, upon the like notice, and in the same manner as other issues in the said court are tried; and it shall be the duty of the said jury to assess the value of the said land or materials, and damages sustained; and if they shall find a greater sum than the said commissioners shall have awarded in favor of the said owner or owners, then judgment thereon, with costs, shall be entered against the said company, and execution awarded therefor; but if the said jury shall be applied for by the said owner or owners, and shall find the same or a less sum than the company shall have offered, or the said commissioners awarded, then the said costs to be paid by said applicant or applicants, and either deducted out of the said sum found by the said jury, or execution awarded therefor, as the court shall direct; *provided*, that such application shall not prevent the company from taking the said land or materials upon the filing of the aforesaid report.

Proviso.

9. *And be it enacted*, That it shall be the duty of said company to construct and keep in repair good and sufficient bridges or passages over or under the said railroad or roads, where any public or other road shall cross the same, so that the passage of carriages, horses and cattle on the said road shall not be impeded thereby; and, also where the said road shall intersect any farm or lands of any individual, to provide and keep in repair suitable wagon ways over or under said road, so that he may pass the same.

Company to conatruct passages for public roads and farm crossings.

10. *And be it enacted*, That the president and directors of the said company shall have power to

Powers to purchase or construct engines, cars, etc.

have constructed, or to purchase with the funds of the company, and to place on any railroad constructed by them, all machines, engines, wagons, carriages or vehicles for the transportation of persons, or any species of property thereon, as they may think reasonable, expedient or right; *provided,** they shall not charge more than at the rate of six cents per mile per ton for the transportation of property on the said road or roads, or four cents per mile for carrying each passenger on said railways in the carriages of the company, or three cents per mile for each ton of property transported, or two cents per mile for each passenger carried on said railways in the carriages of others, and three cents per mile for each empty carriage; and that the railroad or roads, and their appendages, and the land over which the the same shall pass, and all the works and improvements, steam engines, carriages, and all other property whatsoever, belonging to the said company, at any time or times, are hereby vested in the said company, incorporated by this act, and their successors and assigns, during the continuance of this act.

Proviso as to rates of toll.

Railroad and appendages vested in the company.

Dividends to be made semi-annually.

11. *And be it enacted*, That the president and directors shall, within one year after the said railroad shall have been completed, declare and make such dividends as they may deem prudent and proper, of the net profits thereof, and shall, in like manner, semi annually thereafter, declare such dividends, and pay the same to the stockholders of the said company, in proportion to the amount of shares held by them respectively, as they may deem prudent and proper.

Penalty for injury to property of company.

12. *And be it enacted*, That if any person shall willfully impair, injure, destroy or obstruct the use of any railroad enjoyed under the provisions of this act, or of any of their necessary works, wharves, bridges, carriages or machines, such person or persons so offending shall forfeit and pay to the said company the sum of fifty dollars, to be by them re-

* For amendment of proviso, see page 18, section 5.

covered in any court having competent jurisdiction, in an action of debt, and further, shall be liable for all damages.

What real estate may be held by the company for depots and shops.

13. *And be it enacted*, That the said company may have and hold real estate at the commencement and termination of said road or roads at Somerville and the Delaware River, and at intermediate depots upon the line of the said road, not exceeding five acres at each place,† and may erect and build thereon such houses, warehouses, machine-shops and other buildings and improvements as they may deem expedient for the safety of property, and the construction of cars, carriages, steam engines, and for other necessary uses; and shall also have the privilege and authority to erect, build and maintain at the Delaware River, or within thirteen miles of the borough of Easton, such wharves, piers, bridges, and other facilities as they may think expedient and necessary for the full enjoyment of all the benefits conferred by this act; which said lands shall be obtained in the manner provided for in the seventh section of this act.

Privileges to bridge Delaware River.

Statement of cost of road, and when taxes shall be paid.

14.* *And it be enacted, That as soon as the railroad, with its appendages, shall be finished so as to be used, the president and treasurer of the said company shall file under oath or affirmation, a statement of the amount of the cost of the said road, including all expenses, and the amount of all purchases made by virtue of this act, in the office of the Secretary of this State; and annually thereafter, the president and treasurer of the said company shall, under oath or affirmation, make a statement to the Legislature of this State of the proceeds of said road, until the net income of said road shall amount to six per centum upon the amount of its cost; and as soon as the net proceeds of said railroad shall amount to six per centum upon its cost, the said corporation shall pay*

† For additional powers, see page 15, section 5, and page 17, section 1.

* For repeal of this section, see page 19, section 8.

th the Treasurer of this State a tax of one-half of one per centum on the cost of said road, to be paid annually thereafter, on the first Monday of January of each year; provided, that no other tax or impost shall be levied or assessed upon the said company.

Power to borrow money at seven per cent.

15. *And be it enacted*, That the said corporation shall have power to borrow such sum or sums of money, from time to time, as shall be necessary to build, construct or repair said road, and furnish the said corporation with all the necessary engines and machinery for the uses and objects of the said company, and to secure the re| ayment thereof, by bond and mortgage, or otherwise, on the said road, lands, privileges, franchises and appurtenances of or belonging to said corporation, at a rate of interest not exceeding seven per centum per annum.

When the State may take the road and how.

16. *And be it enacted*, That any time after the expiration of fifty years from the completion of the said road, the Legislature of this State may cause an appraisement of the said road, and the appendages thereof, to be made by six persons, three of whom shall be appointed by the Chief Justice of this State for the time being, the remaining three by the company, who, or a majority of them, shall report the value thereof to the legislature, within one year from the time of their appointment; or, if they cannot agree, they shall choose a seventh, who, with the aforesaid six, shall report as aforesaid; or in case the said company shall neglect or refuse to appoint the said three persons on their part, for two months after their said appointment by the said Chief Justice, then the three persons so appointed by him shall proceed to make such appraisement, which shall be binding on the said company; or in case the said six commissioners shall be appointed as aforesaid, and they cannot agree upon the seventh man, then upon two weeks' notice to the said company, the said Chief Justice shall appoint such seventh man, as aforesaid, to make such appraisement as aforesaid, and thereupon the State

shall have the privilege, for three years, of taking the said road, upon the payment to the company of the amount of the said report, within one year after electing to take said road; which report shall be filed in the office of the Secretary of this State, and the whole property and interest of said road, and the appendages thereof shall be vested in the State of New Jersey, upon payment of the amount so reported to the said company; and that it shall be the duty of the president of the company to lay before the legislature, under oath or affirmation, when they shall so request, a full and fair statement of the costs of the said road, and of all the receipts and disbursements of the company; *provided always*, that the aforesaid valuation shall be made without reference to the receipts or disbursements of the company, or advance of the stock; and the said valuation shall in no case exceed the first cost of valuation of said road, with the lands and appendages thereof. Proviso.

17. *And be it enacted*, That if the said railroad shall not be completed and in use at the expiration of ten years from the fourth day of June next ensuing, that then and in that case this act shall be void. What shall make this act void.

18. *And be it enacted*, That the legislature shall have the right to subscribe for the stock of the said company to the amount of twenty-five thousand dollars, at any time before or within twelve months after the said road or roads are completed. Legislature may subscribe for stock.

19. *And be it enacted*, That this act shall be deemed and taken as a public act, and shall at all times be recognized as such in all courts and places whatsoever, and shall take effect immediately after the passage thereof. Public Act.

A Supplement to an Act Entitled "An Act to Incorporate The Somerville and Easton Railroad Company," Passed February Twenty-sixth, Eighteen Hundred and Forty-seven.

Approved February 22, 1849.

May purchase road from Elizabethport to Somerville.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, that it shall and may be lawful for the said "The Somerville and Easton Railroad Company," to purchase the railroad from Somerville, in the county of Somerset, to the Sound, in the township of Elizabeth, in the county of Essex, constructed under and by virtue of an act entitled "An Act to Incorporate the Elizabethtown and Somerville Railroad Company," passed February ninth, eighteen hundred and thirty-one.

May pay for road in stock.

2. *And be it enacted*, That if the said purchase can be made in such manner that, for the payment or part payment of the purchase money for the said railroad, the stock of "The Somerville and Easton Railroad Company," will be taken therefor, then it shall and may be lawful for the said last named company to issue so much of their capital stock now authorized by their said act of incorporation to be issued, as shall be required for that purpose.

Road when purchased to be held under this charter.

3. *And be it enacted*, That when the said purchase shall be made, the railroad so purchased shall be and become a part of the railroad authorized to be constructed by "The Somerville and Easton Railroad Company," and in its further construction and completion, maintenance, use and enjoyment, shall be regulated and governed by the provisions of the charter of the last named company, and for that purpose all and every provision of the act entitled "An Act to Incorporate The Somerville and Easton Railroad Company," shall extend and be applicable

to the railroad so purchased, in every respect as if the same had been authorized to be made, and had been made, under the said last mentioned act; and from thenceforth the said "The Somerville and Easton Railroad Company" shall be known by the name of "The Central Railroad Company of New Jersey;" and all suits now pending in any court of the State of New Jersey against the said Company, shall proceed to final judgment and determination against the said company by the name of "The Somerville and Easton Railroad Company," and final process may issue thereupon against "The Central Railroad Company of New Jersey," the same as if the said suit had been originally commenced against "The Central Railroad Company of New Jersey;" *provided*, that nothing in this act contained shall in any wise affect any right whatever, either at law or in equity, of any stockholder or other person, in, or any claim or demand against "The Elizabethtown and Somerville Railroad Company," or any lien whatever upon the said railroad, or upon any property which by virtue of this act shall be transferred or conveyed; *and provided further*, that upon such purchase as aforesaid being completed, the said "The Central Railroad Company of New Jersey" shall thereby become responsible for all debts contracted by "The Elizabethtown and Somerville Railroad Company," since the foreclosure of the mortgage or mortgages under which the present stockholders of the said last named company claim to hold the said railroad, and shall be liable therefor, in law and equity, in like manner as if the said debts had been contracted by "The Somerville and Easton Railroad Company;" *privided also*, that the said purchase shall be made with the consent of the last mentioned stockholders.

Name of company changed.

Proviso that old claims shall not be affected.

Proviso that present debts shall be assumed.

Proviso

4. *And be it enacted*, That the passage of this act, or any matter or thing herein contained, shall not be held, deemed or construed, in any wise, to affect or prejudice the debts, claims or demands of any person

Suits may be brought against either the old or new company.

or persons, being creditors, or claiming to be creditors of the said "The Elizabethtown and Somerville Railroad Company;" but that all such persons shall have the full benefit of all action and actions, process and processes, at law and in equity, for the recovery of their said debts, claims and demands against the said "The Elizabethtown and Somerville Railroad Company, heretofore commenced or hereafter to be commenced, as they might or could have had if this act had not been passed; and that any process or processes whatsoever, sued or to be sued out of any court or courts, may be served upon any officer of the said "The Central Railroad Company of New Jersey" in the same manner as if the said "The Central Railroad Company of New Jersey" were the defendants therein, and that such service shall be deemed valid and lawful; and that upon the recovery of any judgment or judgments, decree or decrees therein against the said "The Elizabethtown and Somerville Railroad Company," execution or executions, or other process or processes, for the satisfaction of any such judgment or judgments, decree or decrees, shall issue for the sale of the said railroad, and any other property purchased by the said "The Somerville and Easton Railroad Company," from the said "The Elizabethtown and Somerville Railroad Company," or for the sequestration of the tolls, issues, and profits thereof, as the plaintiff or plaintiffs, complainant or complainants, in any such judgment or judgments, decree or decrees, might have had against the said property, if this act had not been passed, and such purchase had not been made; but not from any other property of the said "The Somerville and Easton Railroad Company," or of the said "The Central Railroad Company of New Jersey;" and that such execution or executions, process or processes, may issue either against the said "The Elizabethtown and Somerville Railroad Company," or against the said "The Central Rail-

road Company of New Jersey;" and that the said "The Central Railroad Company of New Jersey" shall have the full and perfect right and benefit to use and have all pleas, defenses and protection at law and in equity, against any suit or suits, action or actions, brought or to be brought, prosecuted or to be prosecuted, and against any final process issued upon any judgment or decree against the said "The Elizabethtown and Somerville Railroad Company," or the said "The Central Railroad Company of New Jersey," as the said "The Elizabethtown and Somerville Railroad Company," or any person under whom the said "The Central Railroad Company of New Jersey" claim to hold the said purchased property, could or might have had, if this act had not been passed.

May hold twenty acres at Elizabethport.

5. *And be it enacted*, That it shall and may be lawful for the said company to purchase and hold lands at the termination of the said railroad at the Sound, in the township of Elizabeth, in the county of Essex, not to exceed twenty acres, for the purpose of erecting thereupon such depots, buildings and shops, and such piers, wharves and other fixtures as may be necessary for the purposes of the said company, and for the accommodation and transportation of passengers and merchandise; *provided*, that the aforesaid lands and improvements shall be subject to the same assessment and payment of township and county taxes as other real estate is or shall by law be subjected to.

Proviso as to taxation of same.

Who shall ride free.

6. *And be it enacted*, That the governor, the chancellor, the justices of the Supreme Court, and the judges of the Court of Errors of this State when traveling for the purpose of discharging the duties of their offices, and the members of both houses of the Legislature of this State, during its annual or other sessions, shall pass and repass over the said railroads in the cars thereof, free of charge.

7. *And be it enacted*, That this act shall take effect immediately.

NOTE.—The purchase of "The Elizabethtown and Somerville Railroad," and consequent change of name of the company to "The Central Railroad Company of New Jersey," dates from the 1st April, 1849.

A Further Supplement to an Act Entitled "An Act to Incorporate The Somerville and Easton Railroad Company," Passed February Twenty-sixth, Eighteen Hundred and Forty-seven.

Approved March 17, 1854.

May extend wharves and piers at Elizabethport.

1. *Be it enacted by the Senate and General Assemby of the State of New Jersey*, That it shall be lawful for "The Central Railroad Company of New Jersey" to erect, build or extend such wharves, docks or piers opposite to and adjoining any lands owned by them in the township of Elizabeth, as far in the Sound or bay as may be necessary for the purposes of facilitating the transshipment of coal, and their general transporting business; and also to have and hold whatever wharves, piers, lands or lots, steamboats, sailing vessels and such other facilities in the City of New York, or elsewhere, as may be necessary for the management of their business.

May hold lands, etc., in New York City and elsewhere.

May increase capital and change value of shares.

2. *And be it enacted*, that the said company may, from time to time, with the assent of a majority in interest of the stockholders, increase their capital stock to any sum not exceeding five millions of dollars; and may also change the value of shares by issuing one share of the value of one hundred dollars, in place of every two shares of the value of fifty dollars.

May consolidate, etc., with connecting roads.

3. *And be it enacted*, That it shall be lawful for the said company to purchase or lease, or operate any railroad which may connect with or intersect their road, or to guarantee the bonds of such company, or to consolidate the stock of such company with their own, on terms to be mutually agreed on; *provided* such purchase or consolidation shall not be made without the assent of three-quartes in interest of the stockholders; *and provided also*, if any stock-

Proviso as to assent of stockholders and rights of those refusing to assent.

holder or stockholders shall refuse his or their assent, or if by reason of absence or legal inability such assent cannot be obtained, application may be made by such stockholder or stockholders within three months from the time that the purchase or consolidation shall take effect, to one of the justices of the Supreme Court of this State, for the appointment of three disinterested, impartial persons, well acquainted with the value of railroad property, as commissioners to appraise the value of the shares held by such stockholder or stockholders, *provided* the appraisement shall in no case be less than the par value thereof; whereupon such proceedings shall be had are provided in section seven of the act of incorporation, for appraising and taking lands, so far as the same is applicable.

Proviso.

Any railroad in the State consolidated, to be held under this charter.

4. *And be it enacted*, That when such purchase or consolidation shall have been made, the railroad so purchased or consolidated, if in this State, shall be and become a part of the railroad authorized to be constructed by the act of incorporation; and in its further construction and completion, maintenance, use and enjoyment, shall be regulated and governed by the provisions of the said charter and its supplements; and for that purpose all and every provision of the said act of incorporation and supplements thereto, shall extend and be applicable to the railroad so purchased or consolidated, in every respect as if the same had been authorized to be made, and had been made under the said act to which this is a supplement.

Limitation of proviso in section 10, as to freight and passengers.

5. *And be it enacted*, That the proviso in section ten of the act of incorporation shall be held to apply only to property usually freighted by the ton, and to passengers carried more than one mile.

Company may take lands for slopes and embankments.

6. *And be it enacted*, That the provisions of article six of the act of incorporation shall apply to land exceeding one hundred feet in width, in any places where, from the depth of the excavation, or the

height of the embankment, it is necessary to take more land for the slopes, and protection of the side banks of the said railroad or its branches; in which case so much land as may be necessary for the purpurpose, and no more, shall be taken.

May alter location or lay out new lines.

7. *And be it enacted*, That it shall be lawful for the said company to change or alter the location of their said railroad, or to locate new lines when additional tracks shall be required, at any point or points between Phillipsburgh and Elizabethport, not varying in any case over one mile from the line as located and filed, after filing in the office of the Secretary of this State a survey of such location as varied from the original location, and shall be invested with all the powers and privileges, and subject to all the conditions and restrictions in taking possession of and using the land required, which by their act of incorporation they might exercise, and to which they are subject respecting lands required for the road; *provided*, that in all cases where the said company shall locate any new line or lines of tracks within the township of Bridgewater, and shall not be the owners of all the land lying between the old line or lines and the new line or lines that may be located as aforesaid, the old lines shall be vacated, and the land upon and over which the same have been constructed shall revert to the original owners thereof, so soon as such new lines shall be completed and used ready for the use of said company.

Proviso as to township of Bridgewater.

Shall pay tax annually on cost, as filed the previous year.

8. *And be enacted*, That it shall be the duty of the treasurer of said company, on the first Monday in January of each and every year hereafter, to pay to the Treasurer of this State a tax of one-half of one per centum upon the cost of said road, as shown by the annual report of such cost, made the year preceding the said first Monday of January in which such payment as aforesaid shall be made; *provided*, that no other tax or impost shall be levied or

Proviso.

Repeal of section 14.

assessed upon the said company; and section fourteen of the act of incorporation is hereby repealed.

Acceptance to be filed, or act void.

9. *And be it enacted*, That if the said company shall, within six months from the passage of this act, file in writing their assent to and acceptance of all the provisions of this act, then the said act shall take effect immediately thereafter; but in case the said company shall refuse or neglect so to do within the time specified, then this act shall be null and void.

NOTE.—The acceptance of this act was duly filed within six months.

SUPPLEMENT TO AN ACT ENTITLED "AN ACT TO INCORPORATE THE SOMERVILLE AND EASTON RAILROAD COMPANY."

APPROVED March 23, 1859.

Company to pay amount of arrearages claimed.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That the said "Somerville and Easton Railroad Company," within six months from and after the date of this act, pay to the Treasurer of this State the sum of thirteen thousand one hundred and twenty dollars and nineteen cents, being the amount of arrearages of tax reported by him to be due; and that in default thereof, the said Company and the Treasurer, with the aid of the Attorney-General, are authorized and required to submit all questions between them in reference to the amount of said tax upon a case by them mutually to be agreed upon, to the opinion and judgment of the Supreme Court; and the said Treasurer is hereby authorized and required to receive from the said Company such amount, if anything, as may be found due according to the opinion of said Court, and give a full acquittance and discharge to said Company.

2. *And be it enacted*, That this act take effect immediately.

NOTE.—This Supplement was passed to enable certain questions of taxation to be settled. The suit brought was decided in favor of the Company. See State Treasurer *vs.* Somerville and Easton Railroad Company, 4 Dutcher, 21.

A Further Supplement to an Act Entitled "And Act to Incorporate The Somerville and Easton Railroad Company," Passed February Twenty-sixth, Eighteen Hundred and Forty-seven.

Approved February 23, 1860.

May extend road to New York Bay at or south of Jersey City.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That it shall and may be lawful for "The Central Railroad Company of New Jersey" to extend their railroad from some point in their track in the city of Elizabeth, to some point or points on New York Bay, in the county of Hudson, at or south of Jersey City; and for that purpose, in its construction and completion, maintenance, use and enjoyment, all and every provision of the act entitled "An Act to Incorporate the Somerville and Easton Railroad Company," and of the several supplements thereto, shall extend and be aplicable to the railroad now authorized to be constructed, in every respect as if the same had been originally authorized under the said act to which this is a supplement.

Bridge over Newark Bay.

2. *And be it enacted*, That the said railroad company shall construct a suitable bridge over any navigable water that they may cross, with pivot draw, with two openings, each of seventy-five feet in width, at right angles to the main channel, located at a point convenient for navigation; and for the safety of persons navigating the said river or water, the said company shall cause to be kept a red light at each outer side of said draw, and a white light on each inner side of said draw, which shall be lighted every evening, before it grows dark, and kept lighted till daylight; and shall keep, or cause to be kept at such bridge, a careful person or persons to open such draw for the free passage of vessels with standing

masts; and for each and every willful neglect to light the said lamp or lamps for one night, or to open said draw, the company shall forfeit and pay the sum of fifty dollars, to be recovered with costs in any court having jurisdiction thereof, by any person who shall sue for the same within six months from the time of such neglect.

3. *And be it enacted*, That it shall be the duty of said company, for the accommodation of commuters and the local travel, to continue their early morning and evening trains from and to Somerville and New York, at least as early in the morning as seven o'clock from Somerville, and as late in the evening from New York as four and a half o'clock. Early morning and evening times.

4. *And be it enacted*, That nothing herein contained shall be construed to prejudice the claims of riparian shoreowners, and that in constructing their said railroad in the county of Hudson, they shall not cross the Jersey City and Bergen Point Plank Road more than once, and shall not construct said road nearer than one thousand feet from a parallel line with the said plank road, except where it may cross the same. Riparian shore owners and Plank Road.

5. *And be it enacted*, That this act shall take effect immediately.

A Further Supplement to an Act Entitled "An Act to Incorporate The Somerville and Easton Railroad Company," Passed February Twenty-sixth, Eighteen Hundred and Forty-seven.

Approved February 23, 1863.

Change of authorized route to Jersey City.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That the railroad authorized in the act to which this is a supplement may lawfully be constructed four hundred feet from, and not nearer to the plank road, at the division line of the lands of John R. Vreeland and Geo. R. Vreeland, and five hundred feet from and not nearer to the said plank road at the New York Bay Cemetery, and six hundred feet from and not nearer to said plank road at Geo. Vreeland's road, and ten hundred feet from and not nearer to said plank road in the line between Stephen Vreeland's and Albert Brown's, and said railroad shall not be constructed at any point south of the last mentioned line, nearer than nine hundred feet from the said plank road, except for the purpose of crossing the same, and that said railroad may be constructed at the distance of nine hundred feet at any point south of said last mentioned line.

2. *And be it enacted*, That all acts and parts of acts conflicting with this act be, and the same are hereby repealed.

3. *And be it enacted*, That this act shall take effect immediately.

A Further Supplement to an Act Entitled "An Act to Incorporate The Somerville and Easton Railroad Company," Passed February Twenty-sixth, Eighteen Hundred and Forty-seven.

Approved March 11, 1863.

Increase capital.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That "The Central Railroad Company of New Jersey," may from time to time, with the assent of a majority, in interest, of the Stockholders of said Company, increase their Capital Stock to any sum not exceeding three millions of dollars, in addition to the present authorized amount of capital."*

2. *And be it enacted*, That this act shall take effect immediately.

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* Making total capital $8,000,000.

A Further Supplement to An Act Entitled "An Act to Incorporate The Somerville and Easton Railroad Company," Passed February Twenty-sixth, Eighteen Hundred and Forty-seven.

Approved April 5, 1865.

Increase capital.

1. *Be it enacted by the State and General Assembly of the State of New Jersey*, That "The Central Railroad Company of New Jersey," may from time to time, with the assent of a majority, in interest, of the Stockholders of said Company, increase their Capital Stock to any sum not exceeding three millions of dollars, in addition to the present authorized amount of capital.*

2. *And be it enacted*, That this act shall take effect immediately.

* Making total capital $11,000,000.

A Further Supplement to an Act Entitled "An Act to Incorporate The Somerville and Easton Railroad Company," Passed February Twenty-sixth, Eighteen Hundred and Forty-seven.

Approved April 6, 1865.

Joint ownership of bridge over Delaware.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That it shall be lawful for such corporation of the State of Pennsylvania as has acquired, or may acquire, the requisite power from the said State, to hold the title to such bridge, and to the requisite offices at the end thereof, in joint ownership, or in such manner as may be agreed upon with the said "The Central Railroad Company of New Jersey."

Provisions for protecting rights of others.

2. *And be it enacted*, That nothing in this, or the Act of which this is a supplement, shall be construed to authorize the construction of any bridge which shall destsoy or materially injure any of the works of the Morris Canal and Banking Company, or the ferry of the said Company across the Delaware river, unless by agreement between the said companies or parties authorized to build the said bridge and the Morris Canal and Banking Company; and further to protect, as far as practicable, the rights aforesaid, and also the rights of navigation and the interests of the public, the location of the piers and abutments of the said bridge shall, before the same shall be constructed, be approved by three suitable and disinterested commissioners, who shall be appointed by the Chancellor and the Chief Justice of this State.

Use of bridge by other corporations.

3. *And be it enacted*, That it shall be lawful for any other railroad or canal corporation of this State to use the said bridge for the transportation of pas-

sengers or freight upon and over it, and to make such connections by tracks, switches, turn-outs or otherwise, as may be requisite to give them a free use of said bridge for the conveyance of passengers or freight to, upon, or over said bridge, and to its connections on either side of the river Delaware; *provided*, that the corporation or corporations using said bridge shall pay to the said "The Central Railroad Company of New Jersey," a sum not exceeding three cents per ton for each ton of merchandise or freight, and five cents per passenger for each passenger, transported over said bridge.

A Further Supplement to an Act Entitled "An Act to Incorporate The Somerville and Easton Railroad Company," Passed February Twenty-sixth, Eighteen Hundred and Forty-seven.

Approved March 5, 1866.

Awards to land owners when to be paid into court.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That in all cases where land shall be taken by commissioners, under provisions of sections seven and eight of the Act to which this is a supplement, where the owner or owners are either unknown or under any legal disability, the amount of the award shall be paid into the Court of Chancery before the company shall proceed to take possession.

Increase of capital.

2. *And be it enacted*, That "The Central Railroad Company of New Jersey" may from time to time, with the assent of a majority in interest of the Stockholders of said Company, increase their Capital Stock to any sum not exceeding four millions of dollars, in addition to the present authorized amount of capital.*

3. *And be it enacted*, That this Act shall take effect immediately.

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* Making total capital $15,000,000.

An Act Respecting "The Central Railroad Company of New Jersey" and "The Newark and New York Railroad Company."

Approved March 17, 1870.

Route of railroad.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That the said "The Central Railroad Company of New Jersey," be and is hereby authorized to survey, lay out, and construct a branch railroad from any point on the track of their road, east of Broad street, in the City of Elizabeth, to connect with the railroad of the said "The Newark and New York Railroad Company" at some point east of the intersection of St. Charles and Ferry streets, in the City of Newark; the said branch to be wholly easterly of a straight line connecting said points, and wholly easterly of the newly located branch of the New Jersey Railroad commonly known as the "cut-off line," as the same is located on a map now on file in the office of the Secretatary of State, and in the survey, location and construction thereof, and in its maintenance, use and enjoyment, all the provisions of the act entitled "An Act to Incorporate The Somerville and Easton Railroad Company," passed February twenty-sixth, eighteen hundred and forty-seven, and the supplements thereto, shall extend and be applicable to the said branch road in every particular.

First-class wooden picket fence to be erected and maintained.

2. *And be it enacted*, That the third and fourth sections of the act entitled a further supplement to an act entitled "An Act to Incorporate The Somerville and Eastern Railroad Company," passed February twenty-sixth, eighteen hundred and forty-seven, which said supplement was passed March seventeenth, eighteen hundred and fifty-four, shall be, and are hereby made applicable in relation to "The New-

ark and New York Railroad Company," anything in any of the provisions of the act incorporating the said "The Newark and New York Railroad Company," to the contrary notwithstanding; and all the provisos in the seventh section of the last named act be and the same are hereby repealed, but the said Company shall, through said cut in the City of Bergen, build and maintain along their railroad, first-class wooden picket fence worth at least two dollars per lineal foot; and that the words "all of whom shall be residents of this State" in the fourth section of the said act, be, and the same are hereby stricken out; *provided*, however, that nothing in this act contained shall grant, or be construed to grant, any right, title, estate or easement, or power, authority or franchise, or privilege of any kind, in or over any lands now under tide water, or that were heretofore under tide water; or to import that any claim, matter, or thing in any acts herein referred to, or referred to in any of the acts herein referred to, did grant any right, title, estate, or easement or power, authority or franchise, or privilege of any kind in or over any lands now under tide water, or that were heretofore under tide water, or be construed to in any way affect the claim of the State of New Jersey to the rent mentioned in the act entitled "An Act to Lease Certain Lands of the State to The Newark and New York Railroad Company," and to enlarge the powers of said Company; *and provided, also*, that the provisions of the sixth section of the act entitled a supplement of the act entitled "An Act to Incorporate The Newark and New York Railroad Company," approved March first, eighteen hundred and sixty-six, which said supplement was approved February twenty-first, eighteen hundred and sixty-seven, shall extend and be applicable to the said branch road in every particular, anything in any of the provisions of this act or of the acts incorporating "The Central Railroad Company of New Jersey," "The Somerville and Esaton Railroad Company," and "The Newark and New York Railroad

Proviso.

Proviso.

Company," and the several supplements to each of said railroads, to the contrary, notwithstanding.

Statement of costs and expenses to be made and filed.

3. *And be it enacted*, That as soon as the said railroad or any part of it is in operation, the President of the said Company shall file under oath or affirmation, a statement of the amount of the cost of the said railroad, including equipments, appendages and all expenses, in the office of the Secretary of State, and annually thereafter on the first Monday in January of each year, he shall, under oath or affirmation, make a statement to the Secretary of State, of the cost, equipments, appendages and expenses of said road; and after the said railroad or any part thereof shall be in operation, the said corporation shall pay to the Treasurer of this State a tax of one-half of one per centum on the cost, equipments and appendages of said road, to be paid annually thereafter on the first Monday in January of each year, and such other taxes as may be assessed from time to time by a general law applicable to all railroads over which the Legislature shall have power for that purpose at the time of the passage of such law or laws; and until the said railroad or any part thereof shall be in operation, the said corporation shall be regularly assessed and pay tax for the value of its real estate, including improvements thereon, and personal property as now taxed in the city or cities, township or townships wherein it lies, at the same time and rate, and in the same manner, for the same purpose, and by the same person or persons as other taxes are assessed in said city or cities, township or townships;

State tax.

Proviso.

Provided, That no other tax or impost shall be levied or assessed upon said Company.

4. *And be it enacted*, That this shall be deemed a public Act, and shall take effect immediately.

A Further Supplement to an Act Entitled "An Act to Incorporate The Somerville and Easton Railroad Company," Passed February Twenty-sixth, One Thousand Eight Hundred and Forty-seven.

Approved March 28, 1872.

May increase capital stock.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That "The Central Railroad Company of New Jersey" may increase their Capital Stock five millions of dollars* in addition to the present authorized amount, using the same to take up the scrip for a similar amount issued with the assent of a majority in interest of the stockholders of said company.

Power to construct branch railroads.

2. *And be it enacted*, That it shall be lawful for the said Company to construct a branch railroad from any point in "The Newark and New York Railroad," east of the Passaic River, to a connection with the Morris and Essex Railroad, in the County of Hudson; and also to construct a branch railroad connecting with "The Newark and New York Railroad," on or at any point west of the Brill farm, to a connection with the Morris and Essex Railroad, in the County of Essex; and for the location, construction and enjoyment of such branches, all the provisions of the charter of the said company and its supplements shall be applicable; *provided*, however, that if either of the said branches shall cross the tracks of the New Jersey Railroad and Transportation Company, such crossing shall not be as grade; *And provided also*, that the said last mentioned branch railroad shall not cross any public street in the City of Newark on grade, without the consent of the Common Council of said city.

Proviso.

Proviso.

3. *And be it enacted*, That this act shall take effect immediately.

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* Making total capital $20,000,000.

A Further Supplement to an Act Entitled "An Act to Incorporate The Somerville and Easton Railroad Company," Passed February Twenty-sixth, One Thousand Eight Hundred and Forty-seven.

Approved March 21st, 1874.

Whereas, "The Central Railroad Company of New Jersey" are the lessees, in perpetuity, of the railroad, branches and works of the Lehigh Coal and Navigation Company, in the State of Pennsylvania, and, in order to secure a paying business for their said railroad and works, it may be advisable and necessasy that the said "The Central Railroad Company of New Jersey" should guarantee the payment of such bonds as may be issued, from time to time, by companies owning or working coal land adjacent to any of the said roads or works; therefore

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That it shall, and may, be lawful for "The Central Railroad Company of New Jersey," a majority in interest of their stockholders consenting thereto, to guarantee the payment of the bonds of any coal company or companies owning or working coal lands along the line of, or adjacent to, any of the railroads, branches or works in the State of Pennsylvania, so held by lease by the said Company, and in which lands the said Company may or may not have an interest.

Guarantee of bonds of coal companies.

2. *And be it enacted*, That the said "The Central Railroad Company of New Jersey" may, from time to time, with the assent of a majority in interest of the stockholders of said Company, increase their capital stock to any sum not exceeding Ten Millions of Dollars in addition to the present authorized amount of capital.*

Increase of capital.

3. *And be it enacted*, That this Act shall take effect immediately.

* Making total capital $50,000,000.

Laws of New Jersey, 1873.

CHAPTER CCCCL.

AN ACT TO ESTABLISH JUST RULES FOR THE TAXATION OF RAILROAD CORPORATIONS, AND TO INDUCE THEIR ACCEPTANCE AND UNIFORM ADOPTION.

WHEREAS, For the encouragement of railroad enterprise, laws creating and regulating railways in this State usually provide for the payment by them, in consideration of their chartered privileges, of a fixed rate upon their capital stock or the cost of their works, in lieu of all other public impositions whatever; AND WHEREAS, it is nevertheless contended that the property of such corporations being largely acquired for, or through the growth and extension of their prosperity, should contribute to the charges and expenses essential for municipal and county purposes; AND WHEREAS, it is desirable in order to the avoidance of litigation and future dissatisfaction that such municipal and county taxation shall be authorized, and that the same shall be permanently fixed and regulated; now therefore,

1. *Be it enacted* by the Senate and General Assembly of the State of New Jersey, that all taxation upon all railroad companies occupying and using railroads in this State, whether as lessees or otherwise, shall hereafter be made as follows: First, such companies shall pay upon the cost, equipment and appendages of said railroads respectively, a State tax after such rate of taxation as may have heretofore been fixed by law upon such companies, or in default thereof, after the rate of one-half of one per centum upon such cost. Second, upon all the real property by them as aforesaid occupied, used or owned for the purposes of their road or otherwise excepting

their main stem or road-bed and track, not exceeding one hundred feet in width, such companies shall pay a county and municipal tax for the benefit of the counties, townships and cities respectively where the same is situate, after the rate of one per centum upon a valuation thereof, and of all improvements thereon, not by way of repairs, now or hereafter to be made, which valuation shall be made as hereinafter stated; *provided, however*, that at the termini of their said roads, each company may hold a tract of land not exceeding ten acres, to be in one parcel, which, with the buildings and improvements thereon, shall be free from the payment of county, township and municipal taxes whatsoever.

2. *And be it enacted*, That on or before the first day of January, in each year, the president of every railroad corporation shall, on oath or affirmation, make return to the Comptroller of this State of the cost of said road, and cost of the equipment and appendages of said railroad used by or belonging to said corporations in this State, respectively, specifying the items and locality thereof, and further showing the cost of said property whereon said State tax is laid as aforesaid, specifying its particular items and their cost; and thereupon, within ninety days after such return, payment shall be made by the said company of the said tax to said treasurer, in default of which payment remedy may be had therefor by suit.

3. *And be it enacted*, That if the State Comptroller shall be dissatisfied with any statement and return aforesaid, it shall be lawful to bring suit in the Supreme Court in the name and for the use of the State against such corporation making such return as for a false return, and to recover in such action, upon proof thereof, the tax aforesaid due upon any property or cost omitted or erroneously stated, and that whether or not payment has been made according to such erroneous return and statement; *provided*, that no such action shall be brought after the expiration of six months from the day of

making such statement and return to such State Comptroller, and that costs shall be recovered by the successful party therein as in all civil cases.

4. *And be it enacted*, That on or before the close of the legislative session in every year, the Governor shall appoint some responsible citizen of the State, Commissioner of Railroad Taxation, to hold office for the space of one year, whose duty it shall be to make, certify under his hand, and return to the State Comptroller a statement and valuation of all the said property occupied, used or owned by or for the purposes of any railroad corporation in any county, city or township in this State, and hereby made subject to county, township and municipal taxation, particularly specifying the same and stating also the township or city wherein the same is situate; such returns and statements shall be made separately for each railroad corporation, and arranged by counties, townships, and municipal subdivisions in such a manner as to be of easy reference, and shall be recorded in books in the office of said State Comptroller to be provided by him for that purpose and shall be public records, subject to public inspection.

5. *And be it enacted*, That before making such valuation and assessment, said commissioner shall give written notice to said railroad corporation, and each township or municipality interested respectively, for at least ten days, of the time and place at which he will proceed to perform said duty; such notice to be served in the manner provided by law for serving writs or summons upon such corporations, and shall then and there, or at such other time as he shall then and there or on any other adjourned day, appoint, judicially fix such valuation, of which such return shall be the evidence, and from which there shall be no appeal.

6. *And be it enacted*, That nothing in this act shall be held to require that such valuation shall be made by such commissioner of the said property

taxable for county, townships and municipal purposes belonging to any particular railroad corporation, oftener than once in three years, and that after the first of such valuations is made no other shall be made for the space of three years thereafter; during said intervening period such valuation shall be final, and said tax of one per centum thereon shall be annually paid thereon to the collectors of the various townships or cities in which said property is situate, as if the same had been laid under the tax laws governing the same; all laws for the collection of ordinary taxes in any such township or city shall be applicable so far as possible to the collection of the tax hereby authorized, or the same may be collected by suit, and it is hereby declared to be the intent hereof, that valuations, in manner aforesaid, of the property of each railroad corporation in this State, for the purpose of county and municipal taxation, shall be made once every three years, but not oftener, and that every such valuation shall be the basis of such taxation yearly, during the intervening period.

7. *And be it enacted*, That said returns by said commissioner shall be made prior to the first day of July in every year, and that the said tax thereon shall be payable within thirty days thereafter.

8. *And be it enacted*, That the said commissioner shall receive a salary of one thousand dollars per annum, payable quarterly and in the manner as other State officers are paid.

9. *And be it enacted*, That all railroad corporations shall be liable for city improvements beneficial to such property, for the purposes for which it is used by the said company, except that hereby made subject to State tax; *provided*, that nothing in this or any act shall have the effect to alter any law now existing in relation to such improvements.

AND WHEREAS, Certain railroad corporations, owning or occupying railroads in this State, claim ex-

emption from all taxation, whether State, county or municipal, further than is provided for by their charters or by special laws for their benefit now existing, which claims, even if legal, subject said corporations to public ill-will, and make it their interest to forego the same and agree to the scheme of taxation hereby established; now, therefore,

10. *Be it enacted*, That any such railroad corporation may, within six months from the approval of this act, make and execute under their common seal and the signature of their president, and file in the office of the Secretary of State, a declaration in writing, surrendering all claim to exemption from taxation by them heretofore had or made, and accepting the provisions of this act in lieu thereof.

11. *And be it enacted*, That all acts and parts of acts inconsistent herewith shall be and the same are hereby repealed.

12. *And be it enacted*, That this act shall take effect immediately.

Approved April 2, 1873.

Laws of New Jersey, 1876.

CHAPTER CI.

AN ACT PROVIDING FOR STATE TAXES ON RAILROADS, AND THE MORE EFFICIENT COLLECTION THEREOF.

1. *Be it enacted* by the Senate and General Assembly of the State of New Jersey, that all railroad corporations and companies occupying or using railroads in this State, whether as lessees or otherwise, liable to be taxed as such by a general law taxing railroads for State purposes, shall pay an annual State tax upon the true value of said railroads, their equipment and appendages of said road, at and after the rate of one-half of one per centum upon such value, and the same to be paid, notwithstanding any provisions in the charters of said corporations or companies or the laws under which said railroads are respectively occupied and used, fixing a different basis, mode or rate of taxation; *provided*, that whereas certain railroad companies, required to pay tax annually to the State, under the provisions of the act entitled "An Act relative to transit duties," approved March fourth, eighteen hundred and sixty-nine, control certain other railroads within this State commonly branch roads, by either owning or leasing them, or by owning a majority, in value, of their capital stock, or by owning or leasing other roads which own or lease them, which branch roads will be assessed under the provisions of this act; the tax paid by any such railroad company under the provisions of the said act of eighteen hundred and sixty-nine, shall be considered a full payment of all taxes hereafter to be assessed upon such branch roads under this act, so long as the amount paid by such railroad company under the provisions of said act of eighteen hundred and sixty-nine shall exceed the

aggregate amount of the taxes upon such branch roads under this act, and of the tax upon such railroad company at the rate of one-half of one per centum upon the costs of their works, including all their property of any description not otherwise taxed, as provided in said act of eighteen hundred and sixty-nine, or so long as this act shall remain in force.

2. *And be it enacted*, that on or before the first day of February, in each year, the president, secretary and treasurer of every railroad corporation or company shall, on oath or affirmation, make return to the Comptroller of this State of the true value of said road and of the equipment and appendages of said railroad used by or belonging to said corporations or companies in this State, respectively, specifying the items and locality thereof, and further showing the true value of said property whereon said State tax is laid as aforesaid, specifying its particular items and their cost; the Comptroller shall forthwith file said return in his office, and thereupon the State tax to be paid by said railroad corporation or company, under this act, shall be immediately due and payable, with interest thereon from the first day of March, at and after the rate of ten per centum per annum, and said tax and the interest thereon shall be and remain a lien on the franchises and property real, personal and mixed of said corporation or company, and the lien of the State for said State taxes and interest shall be prior to all other liens of every nature and description on said franchises and property.

3. *And be it enacted*, That the Comptroller, Treasurer and Commissioner of Railroad Taxation of the State shall constitute a board of railroad commissioners, and when any of the said railroad corporations or companies, required by the second section of this act to make a return to the Comptroller of the State as therein set forth, shall fail to make such return as therein required, or shall make a return that the Comptroller shall have reason to believe is

untrue or insufficient, the said railroad commissioners shall forthwith proceed to estimate the true value of the railroad of such defaulting corporation or company, and the true value of the equipment and appendages of said railroad used by or belonging to said corporation, in this State, and shall also ascertain and state the amount of State tax due thereon at and after the rate of one-half of one per centum upon such true value; and such estimate of true value and the amount of the State tax thereon shall be certified to by them as follows: "We hereby certify that the above estimate of the true value of the railroad of (here insert the name of the corporation or company) and of its equipment and appendages, and the State tax due thereon for the year (here insert year), is just and true according to the best of our knowledge and belief;" they shall sign said certificate and file said estimate, statement and certificate in the office of the Comptroller, and thereupon the State tax to be paid by said railroad corporation or company, under this act, shall be immediately due and payable with interest thereon from the said first day of February, at and after the rate of ten per centum per annum, and said tax and the interest thereon shall be and remain a lien on the franchises and property, real, personal and mixed, of said corporation or company, and the lien of the State for said State taxes and interest shall be prior to all other liens of every nature and description on said franchises and property.

4. *And be it enacted*, That if any railroad corporation or company shall feel aggrieved by the action of said Board of Railroad Commissioners, it shall have the right at any time within ten days after he shall have filed said estimate, statement and certificate in the office of the Comptroller, to appeal therefrom, to a justice of the Supreme Court, whose duty it shall be to summarily hear and decide said appeal, upon depositions, or upon evidence taken by himself, and he may compel the attendance of wit-

nesses before a Supreme Court Commissioner or himself, and punish them as for a contempt upon their failure to appear or answer; and he shall control and regulate the proceedings upon said appeal so that he can decide said appeal within thirty days, unless he shall extend the time by certificate under his hand, which certificate he shall file with the clerk of the Supreme Court, and state therein the time of such extension and the reasons therefor; the decision of said justice upon said appeal shall be certified by him under his hand and filed with the Comptroller; and if said justice shall reduce the amount of said State tax as certified to by said board, he shall state the amount of said reduction and the reasons therefor, and thereupon the Comptroller shall give such railroad corporations or companies credit to the amount of the said reduction, but the amount of tax as fixed after such reduction shall be immediately due and payable, and shall bear interest from the said first day of March, at and after the rate of ten per centum per annum; and said reduced tax and the interest thereon shall be and remain a lien on the franchises and property, real, personal and mixed, of said corporation or company, and the lien of the State for said reduced State taxes and interest shall be prior to all other liens, of every nature and description, on said franchises and property.

5. *And be it enacted*, That whenever any railroad corporation or company has failed to pay its State taxes for ten days after the same has become due and payable under this act, it shall be the duty of the Attorney General to forthwith apply to a justice of the Supreme Court for an order that the said State tax, as returned by such railroad, corporation or company, or assessed by the board of railroad commissioners, or as revised by a justice of the Supreme Court, and the interest due on such tax and a reasonable sum to be certified by said justice to be paid for the expense of said proceedings, and for the services rendered by said board and said Attorney-

General shall be made a record of the Supreme Court and judgment entered for said tax, interest and reasonable sum, in the name of the State of New Jersey as plaintiff, and against said corporation or company as defendant, which order shall be made forthwith upon a certified copy from the Comptroller of the estimate, statement and certificate on file in his office, and the certificate of the treasurer that said tax has not been paid; and also to apply for an order that execution forthwith issue on said judgment, said execution to be directed to a Special Master of the Court of Chancery to be named by said justice in his order; and such an order may be applied for and granted *ex parte*, unless said justice order notice of such application to be given, and in all cases the proceedings shall be summary; under said execution the Master to whom the case is directed shall sell all the franchises and all the property, real, personal and mixed, of said corporation or company, or so much thereof, as may be necessary to make the amount due on said tax judgment and the usual execution fees; such sale shall pass the absolute title to said franchises and property aforesaid sold thereunder, free and clear of all liens and encumbrances of every nature; such notice, advertisement and publication of such sale shall be given as shall be directed in and by the order of said justice, and no other notice, advertisement or publication shall be necessary, and said justice may make such further order or directions as he may deem proper to secure the rights of the State or of any corporation or company interested.

6. *And be it enacted*, That in case of any dispute between the State and any railroad corporation or company as to its liability under this act, or as to the extent of such liability, that it shall be lawful for the State Treasurer to receive and for said corporation or company to pay into the State Treasury, any sum that it may admit to be due for State taxes, and such amount so paid shall be credited on the

State tax as it shall be finally determined and fixed under this act; and the said credit shall be made by the Comptroller, upon the certificate of the State Treasurer, as to the said payment, and no interest shall be charged upon the amount thus paid and credited.

7. *And be it enacted*, That for greater certainty it is hereby declared that this act shall not apply to or affect any county, municipal or local taxation whatever.

8. *And be it enacted*, That the Comptroller, Treasurer and Commissioner of Railroad Taxation shall take and subscribe, and file in the office of the Comptroller, the following oath or affirmation: "I do solemnly promise and swear (or affirm) that I will faithfully, impartially and justly perform all the duties imposed on me by this act, to the best of my ability and understanding."

9. *And be it enacted*, That the Railroad Commissioners shall have power to administer oaths and affirmations to any person to ascertain any facts proper for them to know, in order to enable them to properly perform the duties of their office, and they may reduce their statements to writing, and require them to subscribe and swear thereto, and may *ex parte* apply for and obtain from any justice of the Supreme Court an order to compel any person to submit to such examination in reference to such matters; and such justice may punish any party as for a contempt who shall disobey any order made by said justice in the premises; and any person falsely swearing or affirming in reference to any matters inquired of by said board, or in any evidence given before any justice or Supreme Court commissioner under this act, shall be deemed guilty of perjury, and on conviction thereof shall be liable to all the penalties prescribed by law therefor.

10. *And be it enacted*, That if any corporation or company shall be in default under this act, in payment of the state tax aforesaid, any person having

a mortgage or other lien on its franchises or property, may pay the State Treasurer the amount of such State tax, and the interest due thereon, and receive from said treasurer a certificate of such payment, and such person shall thereupon be entitled to be repaid the amount of said tax, and interest thereon at the rate of ten per centum per annum, out of the first proceeds of any sale of the franchises or property of said corporation or company, and such tax and ten per centum interest thereon shall continue a lien on the franchises and property of the corporation or company for the benefit of such mortgagee or lienor until paid by said corporation or company or from the sale of its franchises or property; if any proceedings have been taken by the Attorney General to enforce the payment of said State tax and interest thereon, then such mortgagee or other lienor paying such tax and interest shall pay such additional amount as a justice of the Supreme Court shall certify to be proper and reasonable to pay for the cost and expense and services on the proceedings as far as they have progressed for the collection of said tax and interest thereon; upon the payment of said tax and the interest thereon and such additional amount (if any), all proceedings shall thereupon cease for the collection of said tax.

11. *And be it enacted*, That this act shall take effect immediately.

Approved April 13, 1876.

FILED.
JAN 30 1890
JAMES H. McKENNEY

In the Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 194.

HENRY S. LITTLE, Receiver of The Central Railroad of New Jersey,
Plaintiff in Error,

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the City of Elizabeth,
Defendants in Error.

ERROR TO THE COURT OF ERROR AND APPEALS OF THE STATE OF NEW JERSEY.

SUPPLEMENT

TO THE FOURTH POINT OF BRIEF OF PLAINTIFF IN ERROR.

THE QUESTION.

DID THE STATE OF NEW JERSEY, IN OFFERING THE SUPPLEMENT OF 1854 TO THE ACCEPTANCE OF THE RAILROAD COMPANY, INTEND TO MAKE A CONTRACT AS TO TAXATION, WHICH, IF ACCEPTED, SHOULD NOT BE REPEALABLE?

This is not a question, however, as to the mental state of the legislators. It is a question as to the natural meaning to

be given to their acts and words, on the faith of which the company was to exercise its option of acceptance or rejection.

1. The Intention of the Company in Accepting the Supplement.

Of this there can be no doubt. Its officers supposed it to constitute a complete contract which could not be altered. Nothing short of this supposition could have justified them in subjecting their stockholders to certain and immediate, instead of contingent and remote, taxation. The company paid taxes on that interpretation of it for over twenty-two years without a doubt being raised as to its irrepealable character. It was not until 1876, *three years* after the passage of the General Railroad Tax Act of 1873, *and fourteen* years after the passage of the General Tax Act of 1862, that the question was first raised.

But were they justified in that supposition by the language of the act as passed by a New Jersey Legislature at that time? To answer this question we must put ourselves back to the year 1854 and understand the relations then existing between the State and railroad enterprises encourged by it, as well as the circumstances surrounding the enactment of this Supplement.

2. Contrast between then and now in the Policy of the State toward Railroads, particularly in the matter of Taxation.

Then the transportation problem was in a transition period between the passing era of turnpike roads and canals and the coming era of railroads. Then railroads were experimental; now they are an assured success. Then they were public enterprises encouraged by the State for public pur-

poses, and often aided from its treasury; now they are private enterprises promoted largely for private gain, and State aid is never given. Then the State was obliged to tempt private capital into railroads by complete or partial tax exemption; now such tax exemption is almost unheard of, and in many States is forbidden by their constitutions.

It is difficult to conceive of a more rapid and complete change in public opinion than has taken place respecting State policy toward railroads within a little more than a generation, and this change is, perhaps, no better illustrated than by referring to the judicial opinions and legislation of that time.

Says the Supreme Court of New Jersey, in November, 1852, shortly before the passage of this supplement, speaking of the Morris and Essex Railroad;

"It was certain that the construction of the road would "benefit the public, but it was not so certain that it would "be profitable to the stockholders; and the Legislature, "therefore, held out to them the immunity of exemption "from taxation as a consideration for the public benefit to "be conferred and an inducement to encounter the hazard, "and this immunity was to continue until the profits of the "road should be such as to enable the company to pay a "reasonable tax."

State *v.* Minton, 3 Zabriskie, 529.

There can be no question that this judicial statement correctly represents the views of intelligent men of that day on the proper policy to be adopted by the State toward railroads.

It only expresses, toward a particular class of corporations, the historical attitude of the public toward other corporations during the first half of this century, which

was so aptly stated by Chief Justice Marshall in the Dartmouth College case:

"The objects for which a corporation is created are uni-
"versally such as the Government wishes to promote.
"They are deemed beneficial to the country, and this
"benefit constitutes the consideration, and, in most cases,
"the sole consideration for the grant. The purposes to be
"attained are greatly beyond the ability of individual enter-
"prise, and can only be accomplished by the aid of associ-
"ated wealth. This will not be risked unless privileges are
"given and securities furnished in the act of incorporation.
"The wants of the public are often so imperative that a
"duty is imposed on Government to provide for them, and
"as experience has proved that a State should not directly
"attempt to do this, it is necessary to confer on others
"what the sovereign power is unwilling to undertake. The
"Legislature, therefore, says to public-spirited citizens: 'If
"you will embark with your time, money and skill in an
"enterprise which will accommodate the public necessities,
"we will grant to you privileges that will justify the ex-
"penditure of your money and the employment of your
"time and skill.' Such a grant is a contract, with mutual
"considerations, and justice and good policy alike require
"that the protection of the law should be assured to it."

The question before the Court involves the attitude of the State of New Jersey toward its railroad companies in the special matter of taxation, and this is strikingly illustrated by the provisions for taxation of railroad charters then enacted.

New Jersey Railroad Charters from 1848 to 1873, as illustrating the policy of the State on Railroad Taxation during that period.

All the railroad charters granted by the State of New Jersey during the five years immediately preceding 1854,

when the Central Railroad Supplement was enacted, contained provisions exempting the companies from tax until the net proceeds of these roads exceeded six or seven per cent. on cost, at and after which time a tax of one-half of one per cent. on cost was to be paid.

The form of the tax provision in these charters, in which the same general language is invariably used, varies only as to the percentage of profits to be received by the stockholders before any tax be paid, whether six or seven per cent., and is illustrated by the charter of the West Jersey Railroad, passed in 1853, which reads as follows:

"As soon as the net proceeds of said road shall amount "to seven per cent. upon its cost, the said corporation "shall pay to the treasurer of this State a tax of one-half "of one per centum on the cost of said road, to be paid an- "nually thereafter on the first Monday of January in each "year."

Laws of 1853, p. 39.

In some instances this tax was to be applied to the school fund, as in the charter of the Ringwood Valley Railroad, the corresponding clause of which reads:

"Whenever the net proceeds of the road shall amount to "seven per centum per annum upon its cost, the said cor- "poration shall pay to the treasurer of this State, to be ap- "plied to the school fund, a tax of one-half of one per cen- "tum on the cost of said road."

Laws of 1854, p. 307.

Such was the policy of the State toward railroads in the matter of taxation at the time when the Central Supplement was passed, and up to the time of its passage *not a single railroad company organized by the State during the decade preceding its passage, which was taxed on the basis of cost, had been required to pay that tax until net proceeds of six or seven per*

cent. had been received, a fact which should be particularly noted as illlustrating the amount of consideration required by the State and yielded by the company for the contract of 1854. It was not until two years afterward, in 1856, that the first sign of any change on the part of the State in this particular occurs. In that year, the Long Branch and Sandy Hook Railroad Company was chartered, and for the first time a railroad charter granted by the State of New Jersey contained a proviso that the tax of one-half of one per cent. on cost should be paid as soon as the railroad was put in operation without regard to "net proceeds."

The tax clause in this charter reads as follows:

"As soon as the said railroad shall be put in operation, "the said corporation shall pay to the treasurer of this "State a tax of one-half of one per centum on the amount "expended by said company on the cost of said road."

This charter remains the solitary example of such a change of policy until the year 1859, when, out of the nine charters granted in that year, four resemble it in this particular, while an equal number were granted with exemption from all tax until there should be net proceeds of 6 or 7 per cent., as in the case of the West Jersey.

Of the eleven charters granted between the years 1854 and 1859, seven followed the precedent of the West Jersey in requiring "net proceeds," never less than 6 per cent., before any tax was payable.

Of the fifteen charters granted during the years 1860, 1861, 1862 and 1863, twelve followed the precedent of the West Jersey, two that of the Sussex and Union Railroad Company and that of The Williamstown Railroad Company, provided for the payment of the standard tax of one-half of one per cent. on cost, "from and after the completion

of said road," and one that of the Cape May and Millville Railroad Company, organized in 1860, further illustrates the continued policy of the State not to exact taxes until stockholders received some return from their investment, by a variation of the previous form of tax clause, which is as follows:

"As soon as the said company shall declare among their "stockholders dividends, the said corporation shall pay to "the treasurer of this State a tax of one-half of one per "centum on the cost of said road."

In the following year, 1864, a transition period in the policy of the State towards railroads in the matter of taxation begins. Seven railroad charters were granted in that year. One of these, that of the Clinton Railroad Company, still clings to the principle that net proceeds of 6 per cent. must be earned before any tax becomes payable. Another, that of the Ogden Mine Railroad, fixes the time when the tax of one-half of one per cent. is to be paid, not after net proceeds of 6 or 7 per cent. had been received, as in the case of the majority of charters granted up to this time, nor even after the payment of dividends, as in the Cape May and Millville Railroad Company, chartered during the previous year, but provides that this tax shall be payable "whenever "the financial condition of the said road and compnny shall "*warrant* the declaration of dividends to the amount of "seven per cent. per annum," with a special proviso for the payment of tax on certain real estate until the dividends were declared. Another, that of the Passaic Valley and Peapack Railroad, provides for payment of this tax after the road "shall be finished so as to be operated."

Four charters, however, for the first time suggest the possibility of some tax over and above the hitherto invaria-

ble rate of one-half of one per cent., in providing for the payment, in addition to this tax, of "such other tax as may "be assessed from time to time by a general law applicable "to all railroads over which the Legislature shall have "power, for that purpose, at the time of the passage of such "law or laws."

The language of this new form of tax clause, as contained in the charter of the Atsion and Tuckerton Railroad, is as follows:

"From and after the said railroad, or any part thereof, "shall be in operation, the said corporation shall pay to the "treasurer of this State, a tax of one-half of one percentum "on the cost thereof, to be paid annually thereafter on the "first Monday of January in each year, and such other taxes "as may be assessed, from time to time, by a general law ap- "plicable to all railroads over which the Legislature shall "have power for that purpose, at the time of the passage "of such law or laws."

Laws of 1864, p. 452.

This transition period continued during the following year, 1865, when four railroads were chartered, of which two charters follow the precedent of the Atsion and Tuckerton; one, that of the Passaic Valley and Peapack, simply provides for the one-half of one per cent. without any other tax, "as soon as the road shall be finished so as to be "operated," and the other, that of the Pemberton and Hanover Furnace Railroad Company, provides that "no tax "shall be levied on said corporation until the earnings of "said road over expenses shall warrant and allow a dividend "to the stockholders of six per centum per annum."

Laws of 1865, p. 876.

In 1866, the transition period has passed, and the new era has commenced. There were fourteen railroad charters

granted during that year. Only one of these, that of the Paterson and Little Falls Railroad, embodies the principle that dividends must be earned before taxes are paid, and this is the last charter granted by the State of New Jersey which follows this old precedent once universal. The remaining thirteen all provide for the payment of the one-half of one per cent. after the railroad is in operation, and in addition thereto, "such other tax as may be assessed "from time to time by a general law applicable to all rail-"roads over which the Legislature has power for that pur-"pose at the time of the passage of such law or laws."

The exact language of this form of tax clause, which, in principle, was adopted in almost every charter granted from 1866 until the enactment of the first General Railroad Tax Law in 1873, is as follows:

"And from and after the said railroad, or any part thereof, "shall be in operation, the said corporation shall pay to "the treasurer of this State a tax of one-half of one per "centum on the capital stock of said road, to be paid "annually thereafter, on the first Monday in January of "each year, and such other State tax as may be assessed "from time to time by a general law applicable to all rail-"roads over which the Legislature shall have power for "that purpose at the time of the passage of such law or "laws."

Charter of Newark & New York Railroad Company, Laws of 1866, p. 176.

It appears from the above citations that during the years preceding and subsequent to 1854, when the Central's contract was made, it was the policy of the State to encourage railroad development, by complete exemption from all public burdens until the promoters of such enterprises realized 6 or 7 per cent. upon their investment; that this policy passed through a transition stage, first indicated by the pas-

sage of a solitary charter in 1856, but not developed until the year 1859, when the tax of one-half of one per cent. began to be imposed after the railroad was "completed" or after it began to be "operated"; that it was not until 1864, ten years after the enactment of the Central's supplement, that the first suggestion of any tax over and above the hitherto invariable one-half of one per cent. was made, and that it was not until two years afterward, in 1866, that the last charter was passed which gave tax exemption until dividends of 6 per cent. were earned, and the policy of the State to require payment of this tax and such other taxes as might be imposed by a general law was inaugurated.

Seventy-one such charters were enacted from the year 1866 to the year 1872, inclusive, and of these every one provides not only for such other tax as may be assessed by a general law, but limits the general law under which it may be imposed to a general law "applicable to all railroads "over which the Legislature shall have power for that "purpose at the time of the passage of such law or laws." Legislative recognition of the fact that there were railroads which had irrepealable contracts with the State in the matter of taxation which could not be affected by any general law could hardly be more complete or more reiterated than by the enactment of this clause from year to year.

From the historic standpoint, which is well illustrated by the above citations, it is clear that public opinion in 1854 not only justified but *required* complete tax exemption for railroads until the promoters realized interest upon their investment, and that the substitution of immediate and certain tax at the rate of one-half of one per cent., which was almost invariably fixed as the highest rate of taxation on such public enterprises, and which was almost invariably imposed only after earning capacity had been developed,

was ample reason and ample consideration for making that rate perpetual.

That the Legislature did not hesitate to make irrepealable contracts for a special rate of taxation whenever they deemed it for the public interest so to do, is amply illustrated by their making such contracts with the Camden and Amboy Railroad and Transportation Company, and with the New Jersey Railroad and Transportation Company before, and with the Morris and Essex Railroad after, the Central's supplement was enacted.

If the language of this contract leaves any doubt as to the intention of the Legislature, then to solve that doubt, we must place ourselves in their surroundings, and interpret it as if the world had stood still since it was made in 1854.

If the question were whether an Act of 1890 created an irrepealable contract, we should approach that question in very much the same frame of mind in which Judge Dixon says he considered this case below; that is, that such a contract would be so at variance with public policy at the present time as to make it inconceivable that the Legislature entertained such an intention, unless "the opposite "judgment cannot be formed by a rational mind."

But the question is whether the Legislature, not of 1890, but of 1854, intended to make such a contract; and to that question, in the light of history, we should answer: Yes, unquestionably, if the language they used naturally imports it.

This line of thought leads directly to the

3. IMPORTANCE OF THE TIME WHEN A LEGISLATIVE CONTRACT FOR SPECIAL TAXATION WAS MADE, AS BEARING ON THE TRUE CANON OF INTERPRETATION.

Judicial decisions have kept in close touch with public opinion, as it has changed during the progress of the cen-

tury, on the relation of the public to railroads, particularly in the matter of irrepealable contracts for taxation; and as the likelihood of legislative intent to make such a contract has diminished, so the rule of interpretation has been more stringently drawn against the railroads and in favor of the State, until a judge of the highest court of New Jersey records himself, as Judge Dixon did in this case, in the following terms:

"But, unfortunately, the question (whether the power "of taxation could be made the subject of contract by "the Legislature) is closed by judicial decisions which no "court in this State (N. J.) can disturb, unless reversed, "courts must feel constrained to decide that it has been put "in force only when the opposite judgment cannot be "formed by a rational mind. If to doubt whether the State "has parted with any public right is to be resolved that it "has not, certainly language can scarcely express the re-"luctance of courts to infer that this most important of all "public rights has been surrendered."

It may well be that even Judge Dixon's language is not too strong to express the unliklihood of such a contract having been intended by any New Jersey legislature of the time when his decision was rendered (1883). No such canon of interpretation should, however, be applied to a contract executed in 1854, when the situation was so entirely different. Contract exemption from taxation was then the rule, not the exception, and a contract to pay a fixed tax in perpetuity was consistent with public policy, and should be interpreted by the same rules which are applied to other contracts.

4. The Consideration for the Contract.

This, too, should be looked at from the standpoint of 1854. It may well be that the $13,268 paid by the railroad

to the State on the first of January, 1855, pursuant to the terms of this contract, seems insignificant now compared with the enormous sums that are exacted for taxes from the same company under the legislation of to-day, just as the entire capital invested in the enterprise of 1854, seems insignificant compared with the large sums now invested; but did it seem inadequate then? It should also not be forgotten that this investment was honestly made on the faith of this contract, and forms part of the consideration therefor.

5. The Language of the Contract.

No clearer language could have been chosen by the legislature in 1854 in which to frame an irrepealable contract than the exact words used, because they had received contemporaneous judicial and legislative interpretation to that effect.

State (The Morris & Essex Railroad Company, Prosecutors) *v.* Minton, 3 Zabriskie, 529.

The syllabus in this case is as follows:

"The charter of the Morris and Essex Railroad Company provides that as soon as the net proceeds of said railroad shall amount to seven per cent. upon its cost, the said corporation shall pay to this State a tax of one-half of one per cent. on the cost of said road; provided, that no other tax or impost shall be levied or assessed upon the said company. It was held:

"1. That the exemption under the word *provided* was a positive enactment exempting the company from all other tax, and not a condition upon which the tax of one-half of one per cent. was payable."

The reasoning of the Judge, who delivered the opinion of the Court, is as follows:

"There can be no reasonable doubt, in my opinion, that "the Legislature intended, by this language, to exempt the "company's property from taxation until the improvement "it was chartered to accomplish should become remuner- "ative, that is, until the income from the road should enable "the stockholders to divide seven per cent. upon their out- "lay. The enterprise proposed was one of public import- "ance. It was certain that the construction of the road "would benefit the public, but it was not so certain that it "would be profitable to the stockholders; and the Legisla- "ture, therefore, held out to them the immunity of exemp- "tion from taxation as a consideration for the public benefit "to be conferred, and an inducement to encounter the "hazard; and this immunity was to continue until the "profits of the road should be such as to enable the company "to pay a reasonable tax. The argument, that the effect of "the clause, prefixed by the word 'provided,' is simply to "relieve the company from the obligation to pay the pros- "pective tax of one-half of one per cent. in case any other "tax or impost should be levied or assessed upon it, is "unsound. If there was no exemption there was no contin- "gency; there was a *certainty* that other taxes *would* be "levied upon the property of the company, and therefore a "stipulation for a prospective tax of one-half of one per "cent. *in case* such other taxes were *not* levied, would be an "absurdity."

Nor is this the only contemporaneous decision of the New Jersey Courts, giving a legal and statutory meaning to such language.

The following words in railroad charters or supplements had been held to constitute *irrepealable contracts*, even when not emphasized by the requirement of acceptance:

"That no further or other tax or impost shall be levied

"or assessed upon said company," in the charter of Paterson and Hudson River R. R. Co.

State *v.* Berry, 2 Harrison, 80 (1839).

Gardner, Assessor of Jersey City, *v.* State, 1 Zabriskie, 557 (1845).

"That no other tax or impost shall be levied or assessed "upon the company," in the charter of the Camden and Amboy R. R. Co.

Camden & Amboy R. R. & T. Co. *v.* Hillegas, 3 Harrison, 11 (1840).

Same *v.* Commissioners of Appeal, 3 Harrison, 71 (1840).

Same *v.* Commissioners of Mansfield, 3 Zabriskie, 510 (1852).

"That no other or further tax or imposition shall be "levied or imposed upon the company," in the charter of the New Jersey Railroad and Transportation Co.

The New Jersey R. R. & T. Co. *v.* Newark, 3 Dutcher, 185 (1858).

It thus appears that the Legislature *could not have chosen more precise language* in which to frame an irrepealable contract than the very words they used.

6. THE FORCE OF THE OPTION OF ACCEPTANCE GIVEN TO THE COMPANY, AS INDICATING THE INTENT OF THE LEGISLATURE TO MAKE AN IRREPEALABLE CONTRACT.

There are only two possible theories as to the reason why the act was so framed in this particular. Either the Legislature recognized that the contract of taxation created by the charter was irrepealable except by consent of the company, and, therefore, very properly made its acceptance

of the supplement prerequisite to its validity, to indicate a voluntary surrender by the company of its old contract, and a voluntary acceptance of the new one, or else the Legislature recognized the injustice of forcing immediate taxation on the company without regard to its earnings, and intended to give it a deliberate choice between taxation only after net earnings of six per cent. had been made, with the possibility of increased taxes at the will of succeeding Legislatures, and immediate taxation at a rate which would not be alterable.

Under either hypothesis the supplement of 1854 created an irrepealable contract. If the contract of 1847 were irrepealable, then *a fortiori* the contract of 1854 was irrepealable. If the contract of 1847 was repealable, then the Legislature, by giving the company a deliberate choice instead of imposing immediate taxation without any assent from the company, intended to make that choice between future taxation alterable at will but to be imposed only after six per cent. was earned, and present taxation which was not to be altered. Otherwise the option would have been absurd, because there was no room for deliberation between the alternatives presented.

7. The force of formal written Assent under Seal.

A careful examination of all the instances in which the State of New Jersey has required written assent from a railroad company as a condition of the validity of any one of its acts, clearly indicates that that form of acceptance has only been called for *when an irrepealable contract was intended to be made.*

These acts are 14 in number, and are as follows:

Relating to the Camden and Amboy Railroad and Trans-

portation Company and the New Jersey Railroad and Transportation Company:

Laws of 1831, Har. Comp., p. 331.
Laws of 1837, " p. 473.
Laws of 1838, " p. 14.
Laws of 1842, " p. 181.
Laws of 1846, " p. 230.
Laws of 1848, " p. 13.
Laws of 1853, ch. 33.
Laws of 1854, ch. 153.
Laws of 1857, ch. 106.
Laws of 1864, ch. 190.
Laws of 1866, ch. 295.
Laws of 1869, ch. 104.

Relating to the Burlington County Railroad Company:
Laws of 1857, ch. 144.

Relating to the Erie Railway Company:
Laws of 1862, ch. 102.

The twelve acts relating to the Camden and Amboy Railroad and Transportation Company and the New Jersey Railroad and Transportation Company all modified or altered the chartered rights of these two companies. The former was incorporated in 1830 and the latter in 1832. Their charters are respectively found in the Laws of 1830, Har. Comp., p. 292, and the Laws of 1832, Har. Comp., p. 385.

Neither charter was subject to alteration, modification or repeal. Both have been held to constitute irrepealable contracts between the State and the companies, which could not be altered except by mutual consent. The method adopted by the State of New Jersey to make new

contracts from time to time with these companies, as illus trated by these acts, was legislative enactment requiring written assent or acceptance from the company, to be void unless that written assent or acceptance were given. The requirement of written assent in a New Jersey law implies intention to make a contract and prescribes the form in which the company is to execute that contract on its part.

The act relating to the Burlington County Railroad authorized change of name, amongst other things, and the assent was evidently required because the Legislature did not wish to force the change, but only to give the company the option to make it if they saw fit.

The Erie act, as appears from its context, was passed under the following circumstances: The New York and Erie Railroad had been sold under foreclosure in the State of New York. The purchasers at this sale had organized a new company, entitled the Erie Railway Company. The new company was by this act authorized to hold all the property and franchises of the former New York and Erie in the State of New Jersey, but their tenure was expressly made subject to all contracts made by the old company with "any other com- "pany or party of this State," and they were only authorized to use the Paterson and Hudson River Railroad and the Paterson and Ramapo Railroad, both New Jersey railroads which had been leased to the old company, with the express proviso that the new company "shall be liable for all claims "arising from the running and operating said railroads under "the laws of the State of New Jersey." To provide for due service of process on the New York company, to which such powers in New Jersey were given, such service was authorized on the "superintendent or chief station agent," and it was enacted that when the sheriff or other officer returned a summons "served" or "summoned," the defendants were to be considered as appearing and might be proceeded

against accordingly. It was further provided that the new company should covenant to perform certain specified contracts.

Here the intention to make a contract between the State and the New York corporation was evident. It was only by requiring written acceptance of this act to be filed that formal execution of this contract on the part of the company could be secured, and, accordingly, it was provided that the act should be void unless the company, within six months, so accepted it.

The only other two acts ever passed by the Legislature of New Jersey requiring the written acceptance of railroad companies were the two tax supplements of the Morris and Essex and Central, one of which has been declared by the United States Supreme Court to constitute an irrepealable contract, and the construction of the other of which is involved in this proceeding.

How can this unusual and extraordinary provision be explained, unless it was the intention of the Legislature to make an irrepealable contract?

No wonder this requirement of formal written acceptance in the Morris and Essex contract so impressed this Court as indicating the intent of the Legislature to make that contract perpetual.

8. Force of Construction by Act of the Parties.

Until the taxes before the Court were assessed in 1876, no question had ever been raised as to the repealability of the contract. This was fourteen years after the General Tax Law of 1862 had been enacted; thirteen years after the Supreme Court of New Jersey had decided that this law repealed special tax provisions in the charters of any railroad companies which did not have irrepealable contracts,

and three years after the General Railroad Tax Law of 1873 had been passed.

If, from the year 1862 on, the Central's contract had been repealed and its property liable to be taxed under the general laws referred to, why were not such taxes assessed? How can the acquiescence of the State and the different municipalities through which the road runs, in this contract, be explained except upon their belief in its irrepealability? Such a belief acted upon for so many years by the public officials of so many different taxing districts, furnishes a cotemporaneous construction of the contract and a construction consistent with the public policy of the time when it was made.

The law of 1862, section 8, provides "That all private "corporations of this State, except those which by virtue "of any irrepealable contract in their charters, or other "contracts with this State, are expressly exempted from "taxation, shall be and are hereby required to be respect-"ively assessed and taxed."

Section 13 provides, "that the real estate of private "corporations situate within this State shall be assessed "to said corporation in the township or ward in which "it is located, in the same manner as the real estate of "individuals."

The act also provides, "that all other acts and parts "of acts, whether special or local, or otherwise, incon-"sistent with the provisions of this act, are hereby re-"pealed."

It was held by the Supreme Court of New Jersey, in 1863, that this act repealed the special tax provisions of the charters of railroad companies which did not have irrepealable contracts with the State (State *v.* Miller, 1 Vr., 369). Unless the Central Railroad, therefore, had an irrepealable contract, it was subject to taxation under this

act from 1863, and yet neither the State nor any municipality taxed it until 1876.

CONCLUSIONS.

Placing ourselves where both parties to this transaction stood in 1854:

For the Legislature to intend to make an irrepealable contract by the supplement was natural and proper according to the then policy of the State toward railroads, the consideration given was substantial and ample, the language used to express that intention could not have been more apt, because it had just received such a judicial interpretation, and the option of acceptance given to the company as well as the formal character of acceptance required if that option were exercised, were alike inconsistent with any other intention. The degree of clearness and certainty in the language of such a contract to justify its enforcement depends upon the attitude of the Legislature toward such a contract at the time when it was made. Such a contract made by the State of New Jersey in 1854 should be interpreted no more rigorously against the Railroad Company than against the State.

ROBERT W. DE FOREST,
B. WILLIAMSON,
GEORGE R. KAERCHER,
Counsel for Plaintiff in Error.

EVENING POST JOB PRINTING OFFICE—N. Y.

Office Supreme Court U. S.
FILED.
MAR 1 1890
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,
Plaintiff in Error,

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,
Defendants in Error.

No. 194.

REPLY OF PLAINTIFF IN ERROR TO BRIEF OF DEFENDANTS IN ERROR.

I.

Though it does not appear on the record, it is neverthe less true, as stated by counsel for defendants in error, that a tax of $249,483.89 was levied under the General Tax Act of 1884, for the year 1889, against the Railroad Company, and it is also true that taxes under this act for the years

1884 to 1888, inclusive, aggregating about $1,000,000, have been levied under this act and paid by the Railroad Company to the State of New Jersey under orders and judgments of the New Jersey Courts, and contrary, as the Railroad Company is claiming in all these proceedings, to the contract which is the subject matter of this suit. Any statements of counsel, however, as to the intentions of the Railroad Company, if the Supreme Court of the United States determine that contract to be an existing one, are pure inference. These facts do not appear in the record, and for that reason counsel for plaintiff in error did not state them or comment on them. It is well, however, for the Court to be made aware of them. They demonstrate the realty and substantial character of this controversy and the large pecuniary amounts involved. But is the magnitude of the wrong any reason why it should not be redressed?

II.

Counsel for defendants in error argues because the Legislature empowered the Somerville & Easton Railroad Company to purchase the Somerville & Elizabethtown Railroad, and directed that the use and enjoyment of the purchased road should be regulated and governed by the charter of the Somerville & Easton, and not by that of the Elizabethtown & Somerville, that therefore it intended this charter as to taxation to be amendable. All that is to be inferred from this act is that the Legislature intended both roads, the one that purchased and the one that was purchased, to be held as respects taxation under the charter of the Easton road, whether that charter was amendable or not

in this particular. That charter, enacted, it is true, after the general law of 1846, provided for tax immunity until net proceeds of six per cent. upon cost were earned, and after that for taxation at one half of one per cent. on cost (sec. 14, Act of Incorporation, p. 59 of Plaintiff's Brief).

One member of the Supreme Court asked counsel on the argument of this case whether it was claimed that this tax provision of the original charter constituted an irrepealable contract. The Railroad Company has taken no position on this question, because it is immaterial to it for any purpose of this argument, whether it be answered in the affirmative or in the negative. This clause of the original charter either did or did not constitute an irrepealable contract. If it did, then *a fortiori* the supplement of 1854, which repealed it, and the assent of the Company, which alone made this repeal effectual, created an irrepealable contract. If it did not, then the supplement of 1854 did constitute an irrepealable contract, for otherwise the choice of acceptance or non-acceptance given by its terms to the Railroad Company is inexplicable and absurd, for the reasons stated in the Sixth Point of Plaintiff's Brief, p. 22.

III.

The only question of contract raised by this suit relates to taxation. The question of the repealability or irrepealability of the power to build new lines, and other powers given by other sections of the supplement of 1854, has not been raised or considered. Like powers to build new lines etc., was given to the Morris & Essex Railroad by its sup-

plement of 1865, all of which became void unless the formal acceptance was filed, and this supplement has been construed by this Court to constitute an irrepealable contract as to taxation.

ROBERT W. DE FOREST,
GEORGE R. KAERCHER,
BENJAMIN WILLIAMSON,
Counsel for Plaintiff in Error.

In the Supreme Court of the United States,

OCTOBER TERM, 1889.

No. 194.

HENRY S. LITTLE, RECEIVER OF THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,

Plaintiff in Error,

vs.

SAMUEL D. BOWERS, COMPTROLLER OF THE CITY OF ELIZABETH, AND THE CITY OF ELIZABETH,

Defendants in Error.

Error to the Court of Errors and Appeals of the State of New Jersey.

BRIEF OF PLAINTIFF IN ERROR,

OPPOSING MOTION TO DISMISS WRIT OF ERROR.

ROBERT W. DE FOREST,
GEORGE R. KAERCHER,
BENJAMIN WILLIAMSON,
For Plaintiff in Error.

Evening Post Job Print, N. Y.

IN THE

Supreme Court of the United States.

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,
Plaintiff in Error,

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,
Defendants in Error.

No. 194.

BRIEF AND AFFIDAVITS OF PLAINTIFF IN ERROR

Opposing Motion to Dismiss Writ of Error.

I.—LACHES.

This Court will not entertain a motion to dismiss, made after argument, when a suit has been pending in this Court for more than three years to the knowledge of all parties and their counsel, and all the causes alleged for dismissal have existed for more than two years. No excuse is offered for these laches. The opportunity for being heard and

filing a brief on the merits on the part of defendants in error was only accorded at the request of plaintiff in error, in contravention of the rules of this Court. That opportunity was not asked for or given to make this motion.

II.—The Realness and Substantial Character of the Controversy.

It is conceded that this Court will dismiss a fraudulent or collusive case, in which there is no real controversy between the parties, as where the plaintiff and defendant were son and son-in-law having common interests, but interests adverse to third parties, which they sought to affect by a collusive judgment (Lord *v.* Veazie, 8 How., 251), or where the appellant purchased the interest of the appellee pending argument, and the appeal was conducted by counsel employed and paid by him, with the view to affect adversely the interests of others not parties to the suit (Cleveland *v.* Chamberlain, 1 Black., 419).

This is not such a suit. The controversy is real and substantial. This suit was deliberately selected as a test case for this controversy with the knowledge of defendants' attorney, Mr. Bergen, and with the knowledge of the Attorney-General of the State of New Jersey, because it was the first suit in which this contract question was raised in the Courts of New Jersey, the suit in which it was decided, and the suit which could be most rapidly brought before this Court for a final decision.

III.—Voluntary Payment.

It is conceded that when taxes have been voluntarily paid actions cannot be maintained to recover them back, but that principle does not affect the taxes now in controversy,

because these taxes were paid partly as a condition of appeal to the courts on the very ground raised by this suit, and partly after suits were commenced to test their legality on this ground, to avoid sale of lands under a summary act which vested the fee simple in the purchasers.

The citations from Dillon on Municipal Corporations, in the brief of defendants in error, apply to taxes paid before suit is brought to test their validity and go so far as to hold that such payments cannot be recovered back even when a protest is filed at the time they are made unless the taxpayer can save himself in no other way than by paying the illegal demand, and gives notice that he pays under duress, and not voluntarily.

These cases illustrate the principle that nothing short of a plainly involuntary payment and a clear declaration of intention to contest it will justify the courts in decreeing repayment.

In the present controversy, however, payments were made before suit brought only when imposed by the Court as a condition for being permitted to bring them, and after suit brought, only to save property from sale in the absence of any stay or possibility of getting one. The duress under which payments were made, and the intention of the railroad to contest the validity of the taxes and not to acquiesce in them could not be more apparent. Payment under such circumstances cannot be deemed to abate this suit.

San Mateo Co. *v.* Southern Pacific R. R., 116 U. S., 138, is not in point. In that case the taxes had been adjudged illegal, and the county was the plaintiff in error in this Court. After argument the railroad voluntarily paid the taxes, evidently intending to settle the controversy, and the suit was dismissed on the motion of the county, because

no further controversy existed. The motion seems to have been opposed by the Railroad Company lest a dismissal might prejudice other suits in which the same question was involved, but this objection was met by a statement of the Chief Justice that another (the Santa Clara) suit had been made a test case by agreement of the parties, and decision of the San Mateo County suit had been by like agreement suspended pending determination of the test case selected, so that the Railroad Company could not be prejudiced by dismissal.

Here grave prejudice would result, because none of the other suits in which the question is presented are on the calendar of this Court, and it is to the interest alike of the Railroad Company and the public that this question should be determined speedily.

IV.—Settlement.

This suit has never been settled. The judgment from which the Railroad Company appeals stands unsatisfied just as it did the day after this appeal was taken, and taxes have been paid in the absence of any stay, only to prevent a sale which would vest absolute title in its purchaser under the law. Had any settlement of this controversy been intended, surely this judgment would have been satisfied and dismissal of this writ asked for and consented to. How could any protest against the validity of these taxes be more emphatic than the commencement and pendency of this litigation, and how could the claim of the Railroad Company for special taxation under its contract be more plainly asserted than in this proceeding? How is it possible that the City of Elizabeth, or its counsel, supposed that such involuntary payment settled this con-

troversy unless at least they applied to the Railroad Company to discontinue this appeal, or at least moved to dismiss the writ, more than two years ago, when the occurrance took place? Certainly, the Railroad Company never supposed for a moment that it must permit judgment against it to be executed as a condition of maintaining its right to appeal. Payment of the taxes in controversy, as a condition of appealing from them, is likehanging a man before he has been tried, but to allege the hanging as a reason for denying him the poor satisfaction of a trial after execution is a depth of injustice hardly conceivable under lynch law.

V.—Summary Answer to Reasons for Dismissal Alleged.

Answer to the first reason: The taxes mentioned in the record in this case were paid under duress as the only means of avoiding execution, and because this suit and the judgment it seeks to reverse both stood as a protest and as an assertion of claim, so that no possible intention of settling this suit could be construed from the act.

The costs were paid to defendants' counsel below, in order to secure his co-operation in altering the judgment so as to enable this very writ of error to be taken. This payment was agreed to before the writ was applied for. Their payment, under these circumstances, is not proof of any intention to abandon this appeal or settle the cause of action, but rather the contrary.

Answer to second reason: This suit is being prosecuted for the lawful purpose of obtaining a decision as to the validity of a contract made between the State and the Railroad Company. The question involves a large sum of money accruing from year to year, and the pending suit

was selected to the knowledge of defendants' attorney, as well as to the knowledge of the Attorney-General of the State of New Jersey, as a test suit in which that question might be decided. The State, through its judicial officers, had knowledge of its pendency, could have taken part in the argument and can do so now. The Railroad Company seek for nothing but a decision on the merits and will gladly join with the defendants or the State of New Jersey in requesting any disposition of it which shall insure a full hearing satisfactory to the State in every particular.

Answer to the third reason: The question is not whether the Railroad Company owes something to the City of Elizabeth. It is whether the City of Elizabeth does not owe something to the Railroad Company. The Legislature and the Courts of New Jersey have seen to it that all railroad taxes shall be paid as a condition of testing their validity, so that none of these taxes are likely to be ever due from the Railroad Company. If the right of the Railroad Company to obtain a hearing on this constitutional question is to depend on taxes being due, it must abandon any effort to obtain justice.

Answer to the fourth reason: This is a repetition of the first reason and can be answered in the same way.

ROBERT W. DE FOREST.
GEORGE R. KAERCHER.
B. WILLIAMSON.

IN THE SUPREME COURT OF THE UNITED STATES.

HENRY S. LITTLE, Receiver of The Central Railroad Company of New Jersey,
Plaintiff in Error,

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,
Defendants in Error.

No. 194.

State, City and County of New York, ss.:

B. WILLIAMSON, being duly sworn, on his oath says:

I am counsel for the Central Railroad Company of New Jersey, and have been such continuously for upward of twenty years. I was also counsel for Henry S. Little, Receiver of said Company, between March 4, 1882, and May 25, 1883, inclusive, and was also counsel for John S. Kennedy and Joseph S. Harris, Receivers of said Company, during their Receivership, which extended from October, 15, 1886. to January 1, 1888.

As such counsel, I have had the sole charge and direction of the suit of Henry S. Little, Receiver, against Samuel D, Bowers, Comptroller of the City of Elizabeth, and the City of Elizabeth, now pending in the Supreme Court of the United States. This suit was conducted with six others of a similar character in the Supreme Court of New Jersey,

and the Court of Errors and Appeals of that State, by me for Henry S. Little, Receiver, now plaintiff in error in the suit in the United States Supreme Court, and by Frank Bergen, Esq., for the City of Elizabeth, who appears as counsel for the defendants in error in this Court.

I have read the affidavits annexed to defendants' notice of motion to dismiss the writ of error herein, dated on February 7, 1890, and served on me shortly thereafter, and make the following statement of facts which I deem material:

FACTS AS TO THE TIME AT WHICH THIS MOTION WAS MADE.

This suit has been pending in the Supreme Court of the United States since July 15, 1886, on which day the citation was personally served on Samuel D. Bowers, the defendant herein, and on Joseph H. Grier, then Mayor of the City of Elizabeth, as appears by the affidavit of William R. Wilson on file in this Court, a copy of which appears in the record at page 13. Its pendency was also personally known to Frank Bergen, Esq., then and now counsel of the defendants herein, from frequent conversations with me and William R. Wilson, who was associated with me as counsel in the New Jersey courts, as well as from the agreement with him under which judgment of the Court of Errors, which had been erroneously entered, was so modified as to enable me to take this writ of error for the purpose of obtaining a speedy determination of the question involved in this suit by the United States Supreme Court. The costs were paid to said Bergen pursuant to this agreement in order the more readily to obtain this modification and enable me the more readily to take this appeal. They were not paid by me or received by said Bergen in settlement thereof. A more detailed statement of what transpired be-

tween myself and Frank Bergen at this time, and made him not only aware of the taking of this appeal more than three years and a half ago, but of the purpose for which it was taken, is contained in a subsequent part of my affidavit.

The case was reached in due course on the calendar of this Court on January 30th last. No one appeared for the defendants in error. Robert W. de Forest, associate counsel with me in this Court, as I am informed and believe, for I was not present in person, then applied for adjournment so that the defendants in error might be heard orally. This application was denied by the Court. He then argued the case, and, at his request, one week's time was accorded the defendants in error in which to file a brief. On the day following the argument, Frank Bergen called upon me and I joined with him in a letter to the Court, asking for an extension of this time, without any hesitation or objection. It was not until after I had done so that I first learned of any intention on the part of Mr. Bergen to make this motion, and it was not until February 7, 1890, eight days after the case had been argued, that any notice of this motion was served to my knowledge or belief.

Facts bearing on the real and substantial character of the controversy.

This is only one of a large number of suits pending between the Central Railroad Company of New Jersey or its Receivers and the State of New Jersey or municipalities in that State, all of which involve the same question, to wit, the repealability or irrepealability of the contract as to taxation made between the Railroad Company and the State. The amount involved in this case is insignificant as compared with the amounts involved in others, but I selected it with the knowledge of Mr. Bergen as the one in which

this question should be brought before the United States Supreme Court for determination, because it was the first one in which this question had been passed upon by the courts of New Jersey, because this point had been passed upon directly without being encumbered with any other issues, as appears by the opinion below, and because it was the one which could be most speedily reached on the United States Supreme Court calendar.

The controversy did not involve large amounts until the enactment of the general railroad tax law of 1884, under which taxes have been assessed against the Railroad Company for State and municipal purposes, including taxes payable to the City of Elizabeth, which aggregate more than $100,000 each year, in excess of the contract rate. The Railroad Company or its Receivers have each year appealed to the Supreme Court of New Jersey, from these taxes, and from that Court in all cases in which judgments have been rendered to the Court of Errors and Appeals. All of these appeals are now pending in one or the other of said courts, and in all of them the Railroad Company has taken the ground, amongst others, that the assessments are void, because contrary to its contract with the State. These proceedings are set forth in more detail in that part of my affidavit which contains the facts as to the payment of taxes.

The Facts as to Payment of Taxes.

It is true that the taxes levied and assessed upon the property and franchises of the Railroad Company, under the general tax law of April 10, 1884, for the years 1884, 1885, 1886, 1887 and 1888, have been paid, as is stated by John J. Toffey, Treasurer of the State of New Jersey, and

Edward J. Anderson, Comptroller of the State of New Jersey, in their affidavits presented in support of this motion, and it is also true that the taxes assessed by the City of Elizabeth under chapter 112 of the Laws of 1886, upon a portion of the property described in the record, have been paid; but it is not true that these payments have been made voluntarily and not under compulsion, and it is not true that the Railroad Company has not made any protest against such payments or any claim to exemption from such taxes by reason of its contract with the State. On the contrary, these payments as to all the taxes levied under the Act of 1884, and referred to in the affidavits of John J. Toffey and Edward J. Anderson, were paid under order of Court as the sole condition under which the Railroad Company would be permitted by the Court to appeal and to obtain any hearing from the Court on this question of contract as well as other questions involved.

Said law of 1884, by section 16, prescribes that, if any company shall desire to contest the validity of any tax levied thereunder, such contest shall be made by *certiorari*, which may be granted "on such terms as the Justice or "Court granting the writ may impose." The terms so imposed by the Court in February, 1885, when the Railroad Company applied for a writ of *certiorari* to review the taxes for the year 1884, which were the first assessed under this act, prescribed that the company should pay the sum of $135,034.18. The sections of this act which prescribe the method and terms of appeal are appended, marked Schedule A. A copy of the order of the Court in that year, under which payment was made, is appended, marked Schedule B.

A similar order, imposing partial payment as a condition of granting the writ of *certiorari*, was made as to the taxes of 1885, and since that time payment of the whole of the

taxes assessed has been prescribed by the Court as the sole condition under which *certioraris* have been granted.

The company has duly appealed every year from the taxes levied under this act upon the ground, amongst others, that these taxes were levied in violation of the contract as to taxation made between it and the State, now before the Supreme Court of the United States in this case, has each year applied for a *certiorari* to contest their validity on this ground amongst others, and has each year paid the taxes, not voluntarily, but under compulsion, either as a condition of granting the writ, or upon judgment of the Supreme Court affirming the validity of the taxes; nor could the company under the law of taxation as interpreted by the New Jersey courts, have obtained a hearing in those courts or an opportunity to present this question to the Supreme Court of the United States by writ of error except by payments as aforesaid.

It is true that "at the time of such payment" the company did not make or file any protest with John J. Toffey, State Treasurer, or with E. J. Anderson, State Comptroller, because such protest had been emphatically made and such claim of exemption had been distinctly stated in the written complaints of the company made each year to the State Board of Assessors, pursuant to the 15th section of said act, and in the application to the Court for writs of *certiorari*, and because, in my opinion, such protest and claim were properly and more effectually made by the due commencement of legal proceedings, of which proceedings both the State Treasurer and the State Comptroller were cognizant. The complaint of the company to the State Board of Assessors setting forth this claim has been in the same form each year. A copy of that part of it material to this motion, as it was filed in 1885, is appended hereto, marked Schedule C. All

these payments which have been made by the Central Railroad Company of New Jersey or its Receivers have been made by vouchers, which, when receipted, operate as and are depositable as checks. These vouchers are all receipted by John J. Toffey, as State Treasurer, and countersigned by E. J. Anderson, Comptroller. A copy of the one on account of taxes for 1884 and 1885, assessed on the Central Railroad of New Jersey and railroads of its system, is appended hereto, marked Schedule D. This voucher which is signed and countersigned by both these State officers, after stating the taxes to which it was applicable, contains the following statement as to payment: "said payment being made pur-"suant to judgments and orders of the Supreme Court."

Payment of the taxes levied by the City of Elizabeth was likewise made involuntarily and under compulsion of law. The law of 1886 for collecting arrears of taxes, as appears from its terms, is quite as summary in its method of enforcement as the general railroad tax law of 1884. Under it Commissioners were appointed by the City of Elizabeth to fix what arrears of taxes should be assessed and charged against a portion of the railroad lands involved in this suit. These commissioners, of their own motion and not on any application of the Railroad Company, did fix the amounts set forth in their affidavits upon a portion of these lands. Under the terms of the act this levy was final and conclusive upon all persons, became immediately due, was collectible by the Comptroller without interest if paid within sixty days, and, if not paid within six months, it was made the Comptroller's mandatory duty to sell the lands assessed at public auction to the highest bidder, and the purchaser at such sale obtained title by fee simple absolute. I am satisfied that no stay could have been procured, and that payment was preferable to a sale, which might divest the

Company of title forever, because no more emphatic protest against the taxes, and no more distinct claim of exemption from them could be made than was made by the pendency of this appeal concerning those very taxes, of which the city authorities of Elizabeth and its counsel were cognizant, and the standing, unsatisfied, of the judgment, from which this appeal was taken.

THE CIRCUMSTANCES UNDER WHICH THIS WRIT OF ERROR TO THE SUPREME COURT OF THE UNITED STATES WAS TAKEN AND UNDER WHICH COSTS WERE PAID TO FRANK BERGEN.

At the time of the giving of judgment in the Court of Errors and Appeals, Bergen well knew from frequent conversations with me and between him, and W. R. Wilson the attorney of Record, that it was the intention of the Central Railroad Company of New Jersey, to have the contract involved in the said suit adjudicated upon by the Supreme Court of the United States, if the final judgments of the State courts should be adverse to the company; and the said suits were conducted through the State courts by arrangements made between counsel, from time to time, to expedite and facilitate the proceedings in reaching the end and object above contemplated.

After argument in the Court of Errors and Appeals, said Bergen caused to be entered in the minutes, without notice to me, the following:

NEW JERSEY COURT OF ERRORS AND APPEALS.

MARCH TERM, 1886.

HENRY S. LITTLE, Receiver, &c., *Plaintiff in Error*, *vs.* SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the City of Elizabeth, *Defendants in Error.*	In Error to Supreme Court.

This cause coming on to be heard at the last November Term of this Court, and being argued by Mr. William R. Wilson, of counsel for plaintiff in error, and Mr. Frank Bergen, of counsel for the defendant in error, and the Court having considered the arguments of counsel and duly examined the record and proceedings brought into this Court by the writ of error in the above stated cause, and finding no error therein, or in the judgment thereon given;

It is thereupon, on this first day of May, A. D. 1886, as yet of the March Term, A. D. 1886, of this Court, by the Court now here, ordered and adjudged, that the judgment of the Supreme Court removed by the writ of error in the above stated cause, be and the same is hereby in all things affirmed, with costs to be paid by the said plaintiff in error to the said defendants in error, and it is further ordered that the record and proceedings be remitted to the said

Supreme Court, to be therein proceeded on in accordance with law and the practice of said Court. On motion of

FRANK BERGEN,

, Attorney for Defendants in Error.

And a like rule in each of the other six cases.

As soon as deponent discovered such entry, he went to said Bergen and complained that such entry had been made, inasmuch as the form in which it was entered, and the fact of remitting the record would defeat the object the plaintiff had in view of taking the judgment by writ of error to the United States Courts. Deponent insisted that something should be done to vacate the entry made by said Bergen, and that such a judgment should be entered as would enable the plaintiff to have it reviewed by the United States Court.

Said Bergen addressed the following letter to the Attorney-General of the State of New Jersey:

"ELIZABETH, N. J., July 6, 1886.

Hon. JNO. P. STOCKTON,

My Dear Sir:

I presume the State has much more interest C. R. R. tax case than this city. I refer to the case of Little *vs.* Bowers. Chancellor Williamson is about to take a writ of error in the U. S. Sup. Court, and desires to have the order for judgment in the Court of Errors changed so as to present a statement of the grounds upon which the case was decided. The enclosed form of order was drawn by Chancellor Williamson, I have no objections to it, but have thought it best to submit it to you before approval. It resembles the order in the Morris and Essex case. I will meet you at almost any time to talk over the matter, if you desire it,

but I am willing to agree to any form of order you approve without conference.

Yours very respectfully,

FRANK BERGEN."

The case is reported in 17th Vol., p. 300.

An arrangement was made between said Bergen and deponent that the costs of the suits amounting to $181.09, should be paid, and that only one writ of error should be prosecuted, and proper steps should be taken to have an entry of judgment in the Court of Error and Appeals as would give the plaintiff the benefit of such writ of error.

In accordance with such agreement, the following entry was made in the Court of Errors and Appeals:

NEW JERSEY COURT OF ERRORS AND APPEALS.

JUNE TERM, 1886.

STATE— LITTLE, Receiver, &c., Pros., *vs.* BOWERS, Comptroller, &c., and THE CITY OF ELIZABETH.	In Error, &c. Taxes of 1876.

Similar writs for years 1877 to 1882, both inclusive.

Mr. Bergen moved to vacate the order entered in the Court of Errors in the above cause bearing date the 1st day of May, 1886, for the reason that it is simply a general affirmance of the judgment of the Supreme Court. Permission was also asked to substitute an order for judgment

in the Court of Errors in which the real question at issue will appear.

The motion was granted and it was directed that the substituted order should be settled by Judge Van Syckel.

Dated July 1, 1886. On motion of
FRANK BERGEN,
Atty. for Defts.

I then drew up such entry as I desired the same to be made, and which is the same order now in the printed book before this Court, said Bergen assented to the same, and I wrote the following letter.

"ELIZABETH, July 2, 1886.

Hon. B. VAN SYCKLE.
Dear Sir:

We are glad not to trouble you with any difference of opinion between Counsel as to settlement of Order.

Will you please approve it and hand it to Clerk of Court.

Very respectfully,

Atty. for Defendant.
B. WILLIAMSON,
for P. in Error."

Then the said judgment as contained in the printed book, on page 10, was entered.

The agreement to pay costs preceded the taking of the writ of error. They were paid only in order to get the changes and alterations in the records and to give the plaintiff the benefit of the writ of error which was brought and is now before the Supreme Court of the United States.

Payment was made to said Bergen of the seven taxed bills of costs, each bill amounting to $25.87, and I took his receipt upon each bill, and all of which are now on file in

the proper office of the Philadelphia and Reading Railroad Company in Philadelphia.

Deponent further says that the judgment upon which the writ of error is brought is and always has been uncanceled of record.

B. WILLIAMSON.

Sworn to before me, this 28th day of February, 1890.

ARCHIBALD C. WEEKS,
Notary Public,
Kings County.

{ Notarial Seal. }

Certificate filed in New York County.

Schedule A.

EXTRACTS FROM THE GENERAL RAILROAD TAX LAW OF 1884.

15. *And be it enacted*, That the said state board of assessors shall meet on the third Monday of December, at the state-house, in Trenton, for the purpose of reviewing their assessment, and may adjourn from day to day till they shall have finished the hearing; upon the written complaint of any company or person considering itself or himself aggrieved, and specifying the grievance, or of the attorney-general or of any member of the board, on behalf of the state, that the property of any company is assessed too low, either in the whole or in any taxing district, or that property has been omitted, they shall review the said assessment, and correct the same as shall appear just; the attorney-general shall attend such meetings of said board in person or by deputy; no complaint that any company or person is assessed too low, or that any property has been

omitted, shall be acted upon until the company or person so assessed shall be notified of such complaint by five days notice to be served on such company or person by leaving the same at the office of such company or at the usual place of abode of such person if a resident of this state, the board shall have the power to examine witnesses and call for the production of books and papers, and they shall be entitled to use their personal knowledge and judgment as to the value of property; they shall certify to the comptroller of the state all corrections which they shall make in any assessment; the proceedings provided for by this section shall be completed, if possible, before the first day of January following the making of said assessment, and all complaints must be presented on or before the third Monday of December, or shall be deemed to have been waived.

16. *And be it enacted*, That if any company or person assessed, or if the attorney-general on behalf of the state, shall desire to contest the validity or amount of any tax levied upon property under the provisions of this act, such contest shall be made by *certiorari*, which may be granted on notice to the attorney-general or to the company or person assessed, on a proper case made, on such terms as the justice or court granting the writ may impose; upon such writ, relief may be had as well in cases where it is claimed that the amount of tax is excessive or insufficient, as in cases where it is claimed that the principle upon which the assessment is made is erroneous; *provided*, that no writ of *certiorari* shall be granted unless the applicant has applied to saie board of assessors to review the assessment as provided for in section eighteen of this act, nor shall any writ of *certiorari* be granted after the expiration of three months from the final determination of said board; if such writ

shall be allowed, and if it shall be made to appear that any assessment is unlawful, excessive or insufficient, the court shall correct the same and reduce or increase it as may be just or refer it back to the board of assessors, who shall correct or re-assess the same in accordance with the instructions of the court; in any suit or proceeding except on such *certiorari*, the certificate and report of the state board of assessors shall be conclusive and shall have the force and effect of a judgment of a court of record having competent jurisdiction and the proceedings whereon such certificate and report are founded shall not be inquired into; no assessment or tax shall be set aside for misnomer of the owner of the property assessed; but the name may be corrected at any time by the board of assessors or court.

Schedule B.

SUPREME COURT OF NEW JERSEY.

FEBRUARY TERM, A. D. 1885.

IN THE MATTER
of
The Application for *Certiorari* of the THE CENTRAL RAIL ROAD COMPANY OF NEW JERSEY.

THE CENTRAL RAIL ROAD OF NEW JERSEY having made application to the Court for a writ of *certiorari* to review the assessment of taxes made by the State Board of

Assessors, upon the property and franchises of said corporation, under the act entitled "An Act for the taxation of railroad and canal property," approved April 10, 1884, and the Court, pursuant to the provisions of the nineteenth section of said act, having considered what portion of the tax so assessed should be justly required to be paid before granting the writ of *certiorari* applied for:

It is, on this twenty-fourth day of February, in the year eighteen hundred and eighty-five, ordered and adjudged by the Court: That it is just, under all the circumstances of this case, that The Central Rail Road Company of New Jersey should pay, before the granting of the writ of *certiorari* applied for, a portion of the tax assessed as aforesaid, amounting to the sum of one hundred and thirty thousand five hundred and thirty-four $\frac{18}{100}$ dollars, and that The Central Rail Road Company of New Jersey do pay, to the Treasurer of this State the said sum of one hundred and thirty thousand five hunered and thirty-four $\frac{18}{100}$ dollars, on or before the fourth day of April, 1885; and that, upon producing to the Court the receipt for such payment, the said writ of *certiorari* be allowed, as of February 24, 1885, and that, in default of such payment, within the time aforesaid, the application for said writ of *certiorari* be and the same is hereby denied.

And it is further ordered that, in case the said payment be made and the writ allowed, either party to the proceedings in said writ of *certiorari*, and each independently of the other, may, immediately thereafter proceed to take depositions to be used upon the hearing, upon five days' notice, before any Commissioner of this Court or Master of the Court of Chancery. And it is further ordered, that the said writ of *certiorari*, when allowed, shall be made returnable on the first Tuesday of April next. And it is further

ordered, that the hearing of said *certiorari* be brought on at the next term of this Court.

DAVID A. DEPUE,
P. J.

Schedule C.

STATE OF NEW JERSEY.

DECEMBER 15th, 1884.

Messrs. EDWARD BETTLE,
A. M. REYNOLDS,
ALEX. G. CATTELL,
ALLAN L. MCDERMOTT,
State Board of Assessors of New Jersey.

GENTLEMEN:— THE CENTRAL RAILROAD COMPANY OF NEW JERSEY protesting that it, the said Central Railroad Company of New Jersey, is not subject to taxation under the act entitled "An act for the taxation of railroad and canal property," approved April 10th, 1884, and not waiving hereby any of their legal rights, and especially hereby claiming exemption from taxation under the above referred to act, by virtue of the contract of The Central Railroad Company of New Jersey with the State of New Jersey, the particular acts of the Legislature whereof constituting said contract are hereinafter set forth, hereby complains of the estimate, statement, certificate and taxation made and filed on the first day of December, 1884, in the office of the Comptroller of the State of New Jersey by the State Board of Assessors of the State of New Jersey, and a purported copy whereof was served upon the Central Rail-

road Company of New Jersey on the fourth day of December, 1884.

This complaint is made pursuant to the provision of the said act, approved the 10th day of April, 1884, and the said The Central Railroad Company of New Jersey specifies the following grounds of complaint and grievance to the said estimate, statement, certificate and taxation above referred to; and the said Company requests your Honorable Board to review and correct the said assessment.

[Here follows a number of paragraphs which relate to the amounts of valuation and taxes.]

EIGHTEENTH.—The said company complains that the said assessment and taxation so imposed upon The Central Railroad Company of New Jersey is unconstitutional and void, not only upon the grounds hereinbefore stated, but for the following reasons:

1. The taxation so sought to be imposed is not by a general law, nor by uniform rules, nor according to the true value of the property taxed.

2. The said act subjects the so-called railroad and canal property therein mentioned to an exceptional system of assessment and to more onerous taxation than other property; and therein violates the provisions of the first section of fourteenth article of the Constitution of the United States, that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

3. Because the said act impairs the obligation of the contract between the State of New Jersey and the said com-

pany expressed in the eighth section of the act of the Legislature of New Jersey, approved the seventeenth day of March, A. D. 1854, entitled "A further supplement to an act entitled 'An act to incorporate the Easton and Somerville Railroad Company,' passed February twenty-sixth, eighteen hundred and forty-seven," whereby the said company was made liable to the tax of one-half of one per cent. therein mentioned, and wherein it was provided that no other tax or impost should be levied or assessed upon the said company, the said act having been duly accepted by the said company in the manner and within the time therein provided.

NINETEENTH.—The said State Board of Assessors erred in not accepting the return of The Central Railroad Company of New Jersey, as filed with the State of New Jersey, of the cost of said railroad, viz., $17,203,161.48, as the basis upon which the said company, at the rate of one-half of one per cent., was liable under the laws of the State of New Jersey to taxation.

TWENTIETH.—The said State Board of Assessors erred in assessing and imposing a tax upon The Central Railroad Company of New Jersey, as, by virtue of the charter of The Central Railroad Company of New Jersey and the several supplements thereto, the said The Central Railroad Company of New Jersey is exempt from taxation under the provisions of the act, entitled "An act for the taxation of railroad and canal property," approved April 10, 1884. Reference is made to the following acts of the Legislature of New Jersey, which, it is claimed, exempt the said The Central Railroad Company of New Jersey from taxation under the said act of April 10, 1884.

The said acts constitute a contract between the State of New Jersey and the said The Central Railroad Company of New Jersey, whereby the said company is exempt from taxation in any manner other than as provided for in and by the said acts of the Legislature of the State of New Jersey.

1. An act, entitled "An act to incorporate the Somerville and Easton Railroad Company," approved February 26, 1847.

2. An act, entitled "A further supplement to an act to incorporate the Somerville and Easton Railroad Company, passed February 26th, eighteen hundred and forty-seven," approved February 22, 1849.

3. An act, entitled "A further supplement to an act to incorporate the Somerville and Easton Railroad Company, passed February 26th, eighteen hundred and forty-seven," approved March 17th, 1854.

4. An act, entitled "A further supplement to an act to incorporate the Somerville and Easton Railroad Company, passed February twenty-sixth, eighteen hundred and forty-seven," approved February 23d, 1860.

5. An act, entitled "A further supplement to an act entitled 'An act to incorporate the Somerville and Easton Railroad Company,' passed February twenty-sixth, eighteen hundred and forty-seven," approved April 6th, 1865.

6. An act, entitled "An act respecting The Central Railroad Company of New Jersey, and The Newark and New York Railroad Company," approved March 17th, 1870.

TWENTY-FIRST.—The said The Central Railroad Company of New Jersey avers that in compliance with the twenty-second section of the said act of April 10th, 1884,

they duly filed a return with the said State Board of Assessors, and therein claimed exemption from taxation under the provisions of the act of April 10th, 1884, and averred full performance under the above-recited acts of the Legislature of the State of New Jersey, of all the things on its part necessary to be done and performed to entitle it to exemption from taxation under the psovisions of the act of April 10th, 1884, and the State Board of Assessors erred in not accepting and allowing to the said Central Railroad Company of New Jersey the said exemption, so claimed by the said company in the said return.

Schedule D.

(Copy.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,

Office, 119 Liberty Street, New York.

To JOHN J. TOFFEY, Treasurer of the State of New Jersey, *Dr.*

1887.

Jany. 6th. For amount on account of taxes of 1884 and 1885 assessed on railroads of the Central New Jersey System to be applied to such taxes on such roads as may be designated hereafter by B. Williamson and Robert W. De Forest, Counsel for Receivers—

Said payments being made pursuant to Judgements and orders of Supreme Court $100,000 00

Register No. 207.

Approved for payment:

S. M. WILLIAMS,
Controller.

I certify that this Voucher is in accordance with an account duly authorized and certified on file and registered in this office.

G. O. WATERMAN,
Auditor of Receipts and Disbursements.

Received January 6th, 1887, of J. W. Watson, Treasurer of the Central R. R. Co. of New Jersey, One Hundred Thousand $\frac{00}{100}$ Dollars, in full of the above account.

$\$100{,}000\frac{00}{100}$

JOHN J. TOFFEY,
Treasurer.

Countersigned: E. J. ANDERSON, Controller.

☞ The above Receipt must be dated and signed by the party in whose favor this Voucher is made out or when signed by another party, the authority for doing so must in all cases accompany it.

[Endorsed]—Voucher—Register No. 207—Central R. R. Co. of New Jersey—Name, John J. Toffey, Treasurer of State of N. J.—Address, Trenton, New Jersey—For the Month of January, 1887—$\$100{,}000\frac{00}{100}$.

[Endorsed]—The First National Bank of New York will pay this Voucher, when duly receipted, in accordance with the regulations prescribed within—J. W. Watson, Treasurer.

IN THE SUPREME COURT OF THE UNITED STATES.

HENRY S. LITTLE, Receiver of The Central Railroad Company of New Jersey, *Plaintiff in Error,* *vs.* SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH, *Defendants in Error.*	No. 194.

State, City and County of New York, ss.:

H. W. DOUTY, buing duly sworn, on his oath says: I am Real Estate Agent of the Central Railroad Company of New Jersey, and in the year 1887 was Real Estate Agent for its Receivers, John S. Kennedy and Joseph S. Harris.

I attended before Messrs. Ludlow, Crane and Heidritter, Commissioners appointed on application of the City of Elizabeth under Chapter 112 of the Laws of 1886, to fix and determine arrears of taxes. These Commissioners did, either of their own motion or on application of the City, not on application of the Railroad Company, fix and determine arrears of taxes on a portion of the property described in the printed record of this suit at the sum of $33,771.18, and payment of this amount was made to the City just before interest began to accrue thereon under the terms of the act.

I attended pursuant to the request of the Commissioners, for the purpose of stating my views as to amount and to pre-

vent a double payment of tax upon a portion of the property, which at that time had been assessed for the years 1884, 1885 and 1886, by the State Board of Assessors, under the general tax law of 1884, and the tax upon which for those years had been paid to the State Board of Assessors, under order or judgment of the Court, as one of the conditions on which the *certiorari* was granted to review this assessment on the ground, amongst others, that it was contrary to the contract existing between the State and the Railroad Company as to taxation. The letters signed by me and by John T. Van Cleef, Secretary State Board of Assessors, contained in the affidavit of Louis Quien, show my effort to prevent this double payment.

I was advised by counsel to pay these taxes rather than to permit the property of the company to be sold, because under the operation of the law there was no alternative between payment or sale, and because the claim of the company to exemption was to be determined in this suit, then pending in the Supreme Court of the United States. I did not file any separate or further protest, or make any further or other claim before the Commissioners than was set up and made in this suit, nor did I discuss with the Commissioners, or they with me, the question of this right of power, because it was well known that these questions were pending undetermined before this Court in this suit. Everything that took place between me and the Commissioners was informal and conversational. No lawyers were present to my knowledge representing either the City or the Railroad Company. I always supposed it to have been a mere business proceeding. I was advised and believed that no more effectual protest against the rightfulness of payment, and no more emphatic claim of exemption under its contract could be made by the Railroad Company than

was made by the pendency of this appeal, and than the standing, unsatisfied, of the judgment from which the appeal was taken.

I had no intention whatsoever of doing any act which could or would affect in any wise this appeal, or waive in any respect the rights of the Railroad Company asserted thereby, nor was I authorized so to do by the Company or its Receivers. I was not real estate agent for Henry S. Little, the plaintiff in error, nor have I ever acted for him or been authorized to act for him in any such capacity.

H. W. DOUTY.

Sworn to before me this 28 day of February, 1890.

ARCHIBALD C. WEEKS,

{ Notarial Seal. }

Notary Public,

Kings County.

Certificate filed in New York County.

IN THE SUPREME COURT OF THE UNITED STATES.

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,
Plaintiff in Error,

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,
Defendants in Error.

No. 194.

State, City and County of New York, ss.:

S. M. WILLIAMS, being duly sworn, on his oath says:

I am Controller of the Central Railroad Company of New Jersey, and have been acting in that capacity for the said company, or for the Philadelphia and Reading Railroad Company, lessees thereof, and John S. Kennedy and Joseph S. Harris, Receivers thereof, during the period of their respective possession of the road.

In conjunction with the Law Department of the Railroad and its Receivers, I have had special charge and knowledge of the matter of taxation. All payments on account of taxes have been made on my approval. All payments on account of State taxes under the general act of 1884, and for that year and for subsequent years, have been made either under direction of the Court as the

sole condition under which *certioraris* were granted or under judgments of the Court affirming assessments made. No such payments have been made otherwise. All assessments made under this act against the Central Railroad of New Jersey have been duly appealed from and *certioraris* taken out therefor, and all these appeals distinctly claim that the taxation was invalid because contrary to the contract made between the State of New Jersey and the Railroad Company, which is the subject matter of this appeal to the Supreme Court of the United States.

S. M. WILLIAMS.

Sworn to before me this 28th day of February, 1890.

ARCHIBALD C. WEEKS,

{Notarial Seal.}

Notary Public,

Kings County.

Certificate filed in New York County.

IN THE SUPREME COURT OF THE UNITED STATES.

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey, *Plaintiff in Error*, *vs.* SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH, *Defendants in Error.*	No. 194.

State, County and City of New York, ss.:

ROBERT W. DE FOREST, being duly sworn, on his oath says:

I am associated as counsel with the Hon. Benjamin Williamson and George R. Kaercher in the Supreme Court of the United States in this suit. I was not concerned in the suit or proceedings before the New Jersey Courts, from the judgment of which this writ of error is taken.

I attended before the Supreme Court to argue this case on January 30 last, and finding, to my surprise, no one present to represent the defendants in error, applied for an adjournment so that they might have opportunity to be heard. This application was refused, whereupon, at the close of argument, I applied to the Court for permission to the defendants in error to file a brief, which application the

Court granted and fixed one week as the limit of time within which it should be filed. This time was subsequently extended to March 3d by my consent.

Neither I, nor any of my associate counsel, have consented to the making of any motion to dismiss or the filing of any brief other than upon the merits.

ROBERT W. DE FOREST.

Sworn to before me, this 28th day of February, 1890.

ARCHIBALD C. WEEKS,
Notary Public,
Kings County.

{ Notarial Seal. }

Certificate filed in New York County.

Office Supreme Court U. S.
FILED.
FEB 24 1890
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 194.

HENRY S. LITTLE, RECEIVER OF THE CENTRAL RAILROAD OF NEW JERSEY,

Plaintiff in Error;

vs.

SAMUEL D. BOWERS, COMPTROLLER OF THE CITY OF ELIZABETH, AND THE CITY OF ELIZABETH,

Defendants in Error.

Error to the Court of Errors and Appeals of the State of New Jersey.

BRIEF FOR DEFENDANTS IN ERROR.

FRANK BERGEN,
FREDERICK C. MARSH,
For Defendants in Error.

Supreme Court of the United States.

OCTOBER TERM, 1889.

THE STATE,

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,

Plaintiff in Error;

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,

Defendants in Error.

No. 194.

Brief for Defendants in Error.

STATEMENT OF FACTS.

On February 14th, 1846, the Legislature of the State of New Jersey passed an act entitled "An Act concerning corporations," the first section of which defines the powers of *every* corporation created by state legislation; the second section of this act enacts that every corporation thereafter created shall possess the powers enumerated in the first section, althongh they may not be specified in its charter; the third section of the act enacts that no corporation shall possess by implication any corporate powers not enumerated in the first section or expressly given in its charter, except such as should be necessary to the exercise of the powers so enumerated and given; the fourth section enacts that no corporation shall by any implication or construction be deemed to possess banking powers; the fifth section enacts that where the whole capital of a corporation has not been paid in,

its stockholders shall be bound to pay in the entire amount of the par of the shares subscribed by them if necessary to pay creditors; the *sixth* section enacts that "*the charter of every corporation which shall thereafter be granted by the legislature shall be subject to alteration, suspension and repeal in the discretion of the legislature.*"

This act will be found in pamphlet laws of 1846, page 16, and a copy of the act is appended to this brief.

On February 9th, 1831, the Legislature of New Jersey passed an act entitled "An Act to incorporate the Elizabethtown and Somerville Railroad Company," authorizing and empowering said corporation to construct a railroad from Somerville to Elizabethtown, now the City of Elizabeth, and by the fifteenth section of said charter it was contracted between the state and the corporation that as soon as the net proceeds should amount to seven per cent. on its cost, the corporation should pay to the state annually a tax of one-half per cent. upon the cost of road, and that no other tax or impost should be levied on the said company.

This charter was *perpetual*, and this contract of partial exemption was *also perpetual.*

The act will be found in pamphlet laws of 1831, page 80, &c., and a copy of the act is appended to this brief.

On February 26th, 1847, the Legislature of New Jersey passed an act entitled "An Act to incorporate the Somerville and Easton Railroad Company," and by section fourteen of said act a contract was entered into between the state and the corporation that as soon as the net proceeds of the said railroad should amount to *six* per cent. upon its cost it should pay annually a tax of one-half per cent. upon its cost, "provided that no other tax or impost shall be levied or assessed upon the said company."

This act will be found in pamphlet laws of New Jersey of 1847, page 128, and a copy of the act will be found in the brief of the plaintiffs in error, page 51.

On February 22d, 1849, the Legislature of New Jersey passed an act entitled a supplement to the act last aforesaid, empowering the Somerville and Easton R. R. Co. to purchase the *railroad* constructed by the Elizabethtown and Somerville R. R. Co.; the authority given by this act was to purchase the *rail-*

road only, and there was no authority given to purchase the franchises, chartered rights, immunities or privileges of the Elizabethtown and Somerville R. R. Co., but, on the contrary, in the third section thereof, it was expressly enacted that the entire railroad when purchased should be maintained, used and enjoyed under the provisions of the charter of the Somerville and Easton R. R. Co., and by the fifth section of the act it was expressly enacted that the terminal property of the said railroad in Elizabeth should not exceed twenty acres, and should be subject to the same assessment of *township and county* taxes as other real estate should by law be subjected to.

This act will be found in pamphlet laws of New Jersey of 1849, page 90, and a copy will be found in the brief of the plaintiff in error, page 62.

This terminal property is the first property described in the writ of certiorari, on page 1 of the transcript of record and on the first map in said record, and is the principal subject matter of the assessment complained of.

On March 17th, 1854, the Legislature of New Jersey passed an act entitled "A further supplement to the charter of the Somerville and Easton Railroad Company;" by the first section of the said act the Central Railroad Company of New Jersey (which was the title conferred upon the consolidated railroad after the purchase of the Elizabethtown and Somerville Railroad Company,) was empowered to erect wharves, docks or piers opposite any of its lands in the Township of Elizabeth, to hold lands in the City of New York or elsewhere, and to hold and run steamboats, sailing vessels, &c.; by the second section the said company was empowered to increase its capital stock five millions of dollars; by the third section the said company was empowered to purchase or lease or operate any railroad which connected with or intersected its road, &c., &c., with the assent of three-quarters in interest of its stockholders, and to take by eminent domain the shares of dissenting stockholders; by the fourth section any railroad so purchased, &c., should be operated under the amendable charter of the Somerville and Easton R. R.; by the fifth section the limitation of the tolls was enlarged in favor of the corporation; by the sixth section restrictions on the width of its right of way were removed; by the seventh section the corporation was empowered to change

and alter its location or to locate new lines; the eighth section is in the words following: "*And be it enacted, that it shall be the duty of the treasurer of said company on the first Monday in January of each and every year hereafter, to pay to the treasurer of this state a tax of one-half of one per centum upon the cost of said road, as shown by the annual report of such cost made the year preceding the said first Monday in January in which such payment as aforesaid shall be made; provided that no other tax or impost shall be levied or assessed upon the said company, and section fourteen of the act of incorporation is hereby repealed;*" section nine of the said act is in the words following: "And be it enacted, that if the said company shall within six months from the passage of this act, file in writing their assent to and acceptance of *all the provisions* of this act, then the said act shall take effect immediately thereafter; but in case the said company shall refuse or neglect so to do within the time specified, then this act shall be null and void."

This act will be found in pamphlet laws of New Jersey, 1854, page 524, and a copy thereof in the brief of the plaintiff in error, page 67.

In 1859 a dispute arose between the state and the Central Railroad Company of New Jersey as to whether the terms "*cost of said road*," in section 8 of the act of March 17, 1854, above stated, included the cost of the *equipment* of said road, and it was adjudged by the courts of the state (28 N. J. Law Reports, page 21,) that the cost of equipment was not to be included in the cost of the road, and no tax was to be paid to the state thereon.

There was never any other difference or dispute between the railroad company and the state than the difference of construction of the above term or clause, and it will be observed that this difference arose after the enactment of the act of 1854, and therefore could not have been any inducement to the passage of that act.

On February 23d, 1860, the Legislature of New Jersey passed a further supplement to the charter of the Somerville and Easton Railroad Company, empowering the Central R. R. of N. J. to extend their railroad from the City of Elizabeth to New York Bay, at or south of Jersey City; but expressly required in the first section of that act, that such extension should be con-

structed, completed, used and enjoyed under the provisions of the *amendable and repealable* act to incorporate the Somerville and Easton Railroad Company.

This supplement will be found in the pamphlet laws of 1860, page 157, and a copy will be found in the brief of the plaintiff in error, page 72.

On March 17th, 1870, the Legislature of New Jersey passed an act respecting the Central Railroad Company of New Jersey, &c., and in the first section thereof empowered the Central Railroad Company of New Jersey to construct a branch railroad from the City of Elizabeth to a point in the City of Newark, but expressly required the said branch railroad to be located, constructed, maintained, used and enjoyed under the provisions of the *amendable and repealable act* incorporating the Somerville and Easton R. R. Co.; and by section three required the company not only to pay a tax of one-half of one per cent. upon the cost of the road, but also to pay such other taxes as might be assessed from time to time under a general law applicable to all railroads.

This act will be found in pamphlet laws of 1870, page 1164, and a copy thereof will be found in the brief of the plaintiff in error, page 80.

On March 28th, 1872, the Legislature of New Jersey by a further supplement empowered the Central Railroad Company of New Jersey to construct a branch railroad to connect with the Morris and Essex Railroad Company in Hudson County, and also to construct a branch railroad to connect with the Newark and New York Railroad; the second section of said act expressly required the Central Railroad Company of New Jersey to locate, construct and enjoy said branches under the provisions of the charter of said company, to wit: the act of February 22d, 1849, entitled "An Act to incorporate the Somerville and Easton R. R. Co."

This act will be found in pamphlet laws of 1872, page 945, and a copy thereof in the plaintiff's brief, page 83.

ARGUMENT.

The plaintiff in error is a corporation of the State of New Jersey and possesses and uses in its business in that state, real and personal property valued by the State Board of Assessors

at $35,777,070, upon which a tax was levied in 1889, under an act entitled "An Act for the taxation of railroad and canal property," approved April 10, 1884, amounting to the sum of $249,483.89. The taxes levied under the aforesaid act for the years 1884, 1885, 1886, 1887 and 1888, upon the franchises and property of this corporation and amounting in the aggregate to about $1,000,000 have all been paid by the plaintiffs in error to the Treasurer of the State of New Jersey. The real object of the corporation in prosecuting this writ of error is to procure, if possible, the adjudication of this court, that in 1854 the state entered into an irrepealable contract with this corporation to exempt the corporation from all taxation excepting a tax of one half per cent. upon the cost *of its road only*. If the corporation can obtain such adjudication it would then claim that the aforesaid act of 1884, which levies a tax of one-half per cent. upon *the value of its franchises, road, equipment and other property*, is unconstitutional, and that the aforesaid taxes for the years aforesaid were unconstitutionally levied upon the Central Railroad Company of New Jersey, and that all the taxes paid under such levy should be returned to the corporation.

POINT I.

The defendants in error conceive that the claim of the plaintiffs in error should be especially subjected to the canon of construction of alleged contracts on the part of a state exempting property from taxation.

This court has repeatedly adjudged that where such a contract is claimed to exist there can be no presumption in its favor and that every reasonable doubt should be resolved against it; and that where such a contract exists it is to be rigidly scrutinized, and never permitted to extend either in scope or duration beyond what the terms of the concession clearly require. There must have been a deliberate intention clearly manifested on the part of the state to grant what is claimed; such a purpose cannot be inferred from equivocal language. In quite a recent case, this court uses the following language in ruling upon this point: "In the leading case of Providence Bank v. Billings, 4 Pet. 514, Chief Justice Marshall, speaking of a partial release of the power of taxation by a state in a charter to a corporation, said: 'That the taxing power is of

vital importance, that it is essential to the existence of government, are truths which it cannot be necessary to reaffirm.' 'As the whole community is interested in retaining it undiminished that community has a right to insist *that its abandonment ought not to be presumed*, in a case in which the deliberate purpose of the state to abandon it does not appear.' 'We must look for the exemption *in the language of the instrument;* and if we do not find it there, *it would be going very far to insert it by construction, 4 Pet. 561, 563. In Philadelphia & W. R. R. v. Maryland, 10 Howard 376, Chief Justice Taney:* 'This court on several occasions has held that *the taxing power of a state is never presumed to be relinquished unless the intention to relinquish* is declared in *clear and unambiguous* terms. *10 How. 393.* In the subsequent decisions the same rule has been strictly upheld and constantly reaffirmed in every variety of expression. It has been said that 'neither the right of taxation nor any other power of sovereignty will be held by this court to have been surrendered *unless such surrender is expressed in terms too plain to be mistaken;* that 'exemption from taxation should never be assumed *unless the language used is too clear to admit of doubt;* that '*nothing* can be taken against the state by *presumption or inference;* the surrender when claimed must be shown *by clear unambiguous language which will admit of no reasonable construction consistent with the reservation of the power;* if a doubt arise as to the intent of the legislature, *that doubt must be solved in favor of the state;* that a state 'cannot *by ambiguous language* be deprived of this highest attribute of sovereignty; that any contract of exemption 'is to be *rigidly scrutinized* and *never permitted to extend*, either *in scope* or duration, beyond what the *terms of the concession clearly require;* and that such exemptions are regarded as in derogation of the sovereign authority and of common right and therefore *not to be extended beyond the exact and express requirement* of the grants construed *strictissimi juris.*'

Jefferson Branch Bank v. Skelly, 1 Black, 436, 446.
Gilman v. Sheboygan, 2 Black, 510, 513.
Delaware R. R. Tax, 18 Wall., 206, 225, 226.
Hoge v. Railroad Co., 99 U. S., 348, 355.
S. West. R. R. Co. v. Wright, 116 U. S., 231, 236.

S. C. 116 U. S. 375 (See Sup. Court Reporter, Vol. 6, No. 10) Erie Ry. v. Penn., 21 Wall., 492, 499.

Memphis Gas Light Company v. Shelby Taxing District, 109 U. S., 398, 401; S. C. 3 Sup. Court Reporter, 205.

Tucker v. Ferguson, 22 Wall., 527, 575.

West Wisconsin Railway v. Supervisors, 93 U. S., 595, 597.

Memphis & L. R. R. v. R. R. Com., 112 U. S., 609, 617, 618; S. C. 5 Sup. Court Reporter, 299.

Vicksburg S. & P. R. Co. v. Dennis, 116 U. S., 665.

It is insisted therefore that the claim of the plaintiff in error that the State of New Jersey by force of sections 8 and 9 of the act of March 17th, 1854, (plaintiff's brief, page 67), made an irrepealable contract of exemption from taxation is to be tested and adjudged by the application of the foregoing canons of construction to the alleged contract.

POINT II.

The original charter of the plaintiff in error (plaintiff's brief, page 51) contains as one of its sections the sixth section of the general act of 1846, (copy of last mentioned act appended to this brief), and is therefore subject to alteration, suspension and repeal in the discretion of the legislature.

This act of February 14th, 1846, is evidently a legislative declaration of the policy of the state with regard to all future legislation concerning corporations, and was intended to declare and limit the powers of such corporations whether such powers were specifically enumerated in their charters or omitted therefrom, and it was also intended to reserve to the state in every instance the power of altering, suspending and repealing all subsequently granted charters wherever such powers were specifically reserved therein or not.

The act of 1846 is *purely local*, and its construction therefore by the highest court of the State of New Jersey, is a rule of decision in this court.

In Christy v. Pridgeon, 4 Wall., 196, this court adjudged that the interpretation within a state of a local law becomes a part of that law as much as if incorporated therein by the legislature.

In Adams v. Nashville, 95 U. S., 19, this court held that a decision by the Supreme Court of the State of Tennessee, that a certain act of the legislature of that state repealed a previous ordinance of the City of Nashville exempting certain bonds from taxation, was binding upon this court.

In Taylor v. Ypsilanti, 105, U. S., 71, the same doctrine is very emphatically affirmed.

The effect of the act of 1846 has been adjudged by the Court of Errors and Appeals of the State of New Jersey in State v. Person, 32 N. J. Law, p. 566; in that case the Warren Railroad Company was chartered in 1851, and in section 15 of its charter it was enacted that as soon as the net proceeds of its railroad amounted to seven per centum upon its cost, the corporation should pay annually to the state treasurer a tax of one per cent. upon the cost of its road, provided that no other tax or impost should be levied or assessed upon said company; a subsequent act of the legislature in 1862 imposed a much heavier taxation upon the company, and the court thereupon adjudged in the following words: "The sixth section of the act of 1846, providing that every charter thereafter passed should be subject to alteration, suspension and repeal, in the discretion of the legislature, was in legal effect incorporated in this charter at the time of its passage."

There can be no doubt, therefore, that the state court has conclusively construed the act of 1846, which is purely local, to be a part of and incorporated in every subsequent charter, which charters are themselves likewise purely local laws creating and governing local corporations.

This court, in original adjudication, not constrained by the prior judgment of a state court, has adjudged that where two corporations, each exempt from taxation, had been consolidated after the enactment of a state code, which code declared that "in all cases of private charters hereafter granted, the state reserves the right to withdraw the franchise unless such right is expressly negatived in the charter," that in such case this provision of the state code rendered the charter of the consolidated corporation subject to alteration, because the consolidated charter was subsequent to and therefore subject to such code.

R. R. Co. v. Georgia, 98 U. S., 359.

It is therefore clear both by federal and state adjudication

that the sixth section of the act of 1846, was and is incorporated in the charter of the Somerville and Easton R. R. Co., now the Central R. R. of New Jersey, passed in 1847.

POINT III.

The supplement to the charter of the Somerville and Easton Railroad Company, passed February 22d, 1849, (plaintiff's brief, p. 62) clearly demonstrates the intent of the legislature to preserve its power of amendment, alteration or repeal over the charter of the Central Railroad Company of New Jersey.

This act of February 22d, 1849, authorizes the practical consolidation of the railroad from Somerville to Easton, constructed by the Somerville and Easton Railroad Company with the railroad constructed by the Elizabethtown and Somerville Railroad from Somerville to Elizabeth.

The charter of the Elizabethtown and Somerville Railroad Company was passed and granted on February 9, 1831, and will be found in the pamphlet laws of 1831, p. 80, &c., and a copy of the charter is appended to this brief.

An inspection of this copy will disclose the fact that it is a perpetual charter unamendable and irrepealable; and that section fifteen contains a like exemption from taxation as is contained in section fourteen of the charter of the plaintiff in error, the only difference being that the tax of one-half of one per cent. becomes payable annually by the Elizabethtown and Somerville Railroad Company when its net earnings amount to *seven* per cent. on the cost of its road, whilst section fourteen of the charter of the plaintiff in error requires the payment of the same tax when the net earnings amount to *six* per cent. upon the cost of road.

If then the legislature of 1849 had authorized the *consolidation* of the stock, franchises, privileges, roads, &c., of these two corporations a grave question would have arisen as to whether the consolidated corporation and its charter would not have been clothed with the quality of unamendability and irrepealability which belonged to the charter of the Elizabethtown and Somerville Railroad Company and whether the tax exemption contracts would not have been perpetual.

It was the intention of the legislature to avoid saddling the state, by any possible implication or construction, with an irre-

pealable contract with a corporation formed by the consolidation of these two railroad companies.

The legislature, therefore, by the first section of the act of February 22d, 1849, empowered the Somerville and Easton Railroad Company to purchase *the railroad only*, which had been constructed by the Elizabethtown and Somerville Railroad Company under the act of February 9th, 1831, and refused to empower the purchase of the *stock, franchises and privileges* of the Elizabethtown and Somerville Railroad Company; and further expressly enacted in section three of the last mentioned act that the railroad from Somerville to Elizabeth when purchased *should become a part of the railroad* authorized to be constructed under the charter of the Somerville and Easton Railroad Company, and that in its further construction and completion, maintenance, use and enjoyment the purchased road should be regulated and governed by the charter of the last named company, and that all and every provision of that charter should extend and be applicable to the purchased railroad in every respect as if the same had been authorized to be made and had been made under the last named charter.

The purchase was made under this legislation and the effect of it was to destroy the charter, rights, franchises and privileges of the Elizabethtown and Somerville Railroad Company, which corporation thereby ceased to exist, and with its existence also ceased the perpetual exemption from taxation contained in section fifteen of the charter of the Elizabethtown and Somerville Railroad Company.

It is submitted that is impossible to doubt that the legislature intended by this guarded legislation to wipe out the perpetual contract of exemption from taxation, and to secure the operation of the entire railroad of the Central Railroad Company of New Jersey under the amendable and repealable contract of exemption from taxation expressed in section fourteen of the charter of the Somerville and Easton Railroad Company, which corporation, after the purchase of the railroad aforesaid, became and was constituted the Central Railroad Company of New Jersey. (Plaintiff's brief, p. 63.)

All the subsequent legislation respecting this corporation which authorized the Central Railroad Company of New Jersey to extend its railroad or to purchase, lease or operate other rail-

roads, or to consolidate with other railroad corporations, was carefully expressed so as to preserve the amendable and repealable character of the contract of exemption from taxation between the state and such company. Thus the act of March 17th, 1854, (Plaintiff's brief, p. 67,) which confers very wide powers of purchase and consolidation upon the Central Railroad Company, very carefully and expressly provides in its fourth section that any railroad purchased, leased or consolidated should be governed and operated under the amendable charter of 1847.

And the act of February 23d, 1860, (Plaintiff's brief, p. 72,) empowers the Central Railroad Company to extend its road from Elizabeth to Jersey City, but section one expressly enacts that the extended road shall be operated under the amendable charter of 1847.

And so also in the act of March 17th, 1870, (Plaintiff's brief, p. 80,) which empowers the Central Railroad Company of New Jersey to construct certain *branch* roads, the legislature have in section one jealously and expressly enacted that such branch roads should be constructed and operated under the amendable charter of 1847.

It is submitted, therefore, that from 1847 down to and including 1870, the Legislature of New Jersey did evidently intend and carefully provided for the retention of its power to alter, amend or repeal the charter of the Central Railroad Company of New Jersey, as fully and completely as it reserved such power by the sixth section of the general corporation act of 1846 which section was, in legal effect, incorporated in the charter of the Somerville and Easton Railroad Company of February 26th, 1847.

POINT IV.

Sections eight and nine of the act of March 17th, 1854, (Plaintiff's brief, p. 67,) do not constitute a perpetual, unamendable and irrepealable contract between the State of New Jersey and the Central Railroad Company of New Jersey.

The plaintiff in error contends that this question is *res adjudicata* by New Jersey v. Yard, 95 U. S., 104, and that the material facts in that case and the present case are identical, but the difference of the facts in the two cases is very apparent.

(*a*) In the Yard case the charter reserved the power of amending and repealing only the original charter of 1835 and the first supplement of 1836, and nothing more, nor was section 6 of the general act of 1846 applicable to the subsequent amendments.

In the present case, section 6 of the act of 1846 is an actual part of the original charter of 1847 and of all its supplements.

(*b*) In the Yard case the company denied the right of the state to tax its property under the general tax act of 1862, and had carried on a vigorous litigation with the state asserting such exemption. (See 30 N. J. Law, p. 368, 31 N. J. Law, p. 521,) in which judgment had been rendered against the corporation, and the corporation was about to prosecute its writ of error to this court. The contract of 1865 between the state and the corporation was intended to settle this vexed question.

In the present case there was no vexed question whatever respecting taxation or any other subject, between the state and the Central Railroad Company of New Jersey, or the Somerville and Easton Railroad Company, or the Elizabethtown and Somerville Railroad Company.

(*c*) In the Yard case the act of 1865 (P. L. 1865, p. 565,) provided for the assent of the corporation to the particular section 3, which was passed as a settlement of the controversy respecting taxation.

In the present case the assent of the company was required to be filed to *all the provisions* of the act of March 17th, 1854. (Plaintiff's brief, p. 67.)

(*d*) In the present case section 4 of the act of 1854 impresses upon the act the same character of amendability and repealability which inhered in the original charter of 1847 by force of the general act of 1846, and according to the canons of construction of contracts of exemption from taxation, the same legislative intent must be imputed to section 8 of the same act, which the plaintiff in error contends to be an irrepealable contract.

(*e*) In the present case it will be remembered that the acceptance required by section 9 of the act of 1854 was an acceptance of *all the provisions* of that act.

If, therefore, such acceptance constituted the taxation contract of section 8 an *irrepealable* contract, the result will be that

under *section 1* of the act the Central Railroad Company have an irrepealable franchise to build or extend wharves, docks or piers, and to enter into the trans-Atlantic or coastwise transportation business of merchandise and passengers, and constitute steamship lines for general transportation business; and under section 2 the said company has the irrepealable franchise of increasing its capital stock; and under section 3 such company has the irrepealable franchise of purchasing, leasing, operating or consolidating with any railroad which may connect with or intersect its road; and under section 5 the said company has an irrepealable franchise to exact any amount of tolls it may choose for the transportation of all property not usually freighted by the ton, (and the court will note that all the higher classes of freight are usually transported by railroads by the hundred weight); and that under the same section they have an irrepealable franchise to exact any toll they may please for the transportation of passengers for any distance under one mile, and that under *section 7* they have an irrepealable franchise either to alter the location of their railroad or to locate new lines over any territory within the State of New Jersey not more than one mile in either direction from the line of its original location.

It is submitted, therefore, that the court will hardly impute to the Legislature of New Jersey an intention to enter into a contract to vest in this corporation forever the vast powers which are contained in this act, and it is quite clear that if such intention was entertained by the legislature in respect to the eighth section of the act of 1854 it must have been entertained with respect to all the other sections, and yet all those other sections are matters of pure legislative enactment, and are, at the utmost, parts of a repealable and amendable act of incorporation.

It is impossible to hold that the mere act of acceptance of all the provisions of this act by a mere instrument in writing, which is all that is called for by section nine of the act of 1854, resolves every reasonable doubt and declares the intention of the state in clear and unambigious terms construed *strictissimi juris.*

To arrive at such a conclusion would be simply to reverse all the adjudications of this court cited in the former part of this

brief. The reasonable construction of section nine is simply that the legislature chose to provide specific evidence of the acceptance of all the provisions of this act (which acceptance is necessary to the operation of every charter) instead of leaving the matter of the acceptance to be inferred from the exercise of the enormous powers granted by the act to the Central Railroad Company of New Jersey.

This was the judgment of the State Court of Errors and Appeals, and this court is respectfully asked to confirm that judgment.

FRANK BERGEN,
FREDERICK C. MARSH,
Counsel for Defendants in Error.

APPENDIX OF LAWS.

AN ACT CONCERNING CORPORATIONS.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That every corporation, as such, shall be deemed to have power—

1. To have succession, by its corporate name, for the period limited in its charter, and when no period is limited, perpetually, except so far as the constitution otherwise provides concerning banks or money corporations;

2. To sue and be sued, complain and defend, in any court of law or equity;

3. To make and use a common seal, and alter the same at pleasure;

4. To hold, purchase, and convey such real and personal estate as the purposes of the corporation shall require, not exceeding the amount limited in its charter;

5. To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation;

6. To make by-laws, not inconsistent with the constitution or laws of the United States or of this state, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

2. And be it enacted, That the powers enumerated in the preceding section shall vest in every corporation that shall hereafter be created, although they may not be specified in its charter, or in the act under which it shall be incorporated.

3. And be it enacted, That in addition to the powers enumerated in the first section of this act, and to those expressly given in its charter, or in the act under which it is or shall be incorporated, no corporation shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated and given.

4. And be it enacted, That no corporation, created or to be created, shall, by any implication or construction, be deemed

to possess the power of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying gold or silver bullion or foreign coins, of buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt, upon loan or for circulation as money, unless such corporation is or shall be expressly incorporated for banking purposes, or unless such powers are or shall be expressly given in its charter.

5. And be it enacted, That where the whole capital of a corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the company, or such proportion of that sum as shall be required to satisfy the debts of the company.

6. And be it enacted, That the charter of every corporation which shall hereafter be granted by the legislature, shall be subject to alteration, suspension and repeal, in the discretion of the legislature.

7. And be it enacted, That it shall not be lawful for the directors of any bank, or moneyed or manufacturing corporation in this state, to make dividends, except from the surplus profits arising from the business of the corporation, nor to divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the said corporation, nor to reduce the said capital stock without the consent of the legislature; and in case of any violation of the provisions of this section, the directors under whose administration the same may happen shall, in their individual and private capacities, jointly and severally, be liable to the said corporation, and to the creditors thereof, in the event of its dissolution or insolvency, to the full amount of the capital stock so divided, withdrawn, paid out or reduced, with legal interest on the same from the time such liability accrued; provided, that any of the said directors who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may respectively exonerate themselves from such liability, by causing their dissent to be entered at large on the minutes of the said directors, at the time the same is done, or forthwith after they shall have notice of the same, and by causing a true copy of the dissent so entered on the minutes to be pub-

lished, within two weeks after the same shall have been entered on said minutes, in some public newspaper published in the county where the said corporation has its office or place of business; and if none be published in such county, then in a newspaper printed in an adjoining county, and circulating in the neighborhood of such office or place of business of said corporation; and provided also, that this section shall not be construed to prevent a division and distribution of the capital stock of the corporation which shall remain after the payment of all its debts, upon the dissolution of the corporation or the expiration of its charter.

8. And be it enacted, That this act shall take effect immediately.

Approved, February 14, 1846.

An Act to Incorporate the Elizabethtown and Somerville Railroad Company.

Sec. 1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That Isaac H. Williamson, William Chetwood, Edward Price, Samuel Downer, John Allen, Peter I. Stryker, John P. Vroom, Isaac Southard, and such other persons as may hereafter be associated with them, shall be, and are hereby ordained, constituted, and declared to be a body corporate and politic in fact and in name, by the names of "The Elizabethtown and Somerville Railroad Company;" and, by that name, they and their successors and assigns shall and may have continued succession, and shall be persons, in law, capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended, in all courts and places whatsoever and shall have power to make and use a common seal, and the same, at pleasure, to alter; and they and their successors, by the same name and style, shall be capable of purchasing, holding and conveying any lands, tenements, goods and chattels, whatsoever, necessary or expedient to the objects of this incorporation.

Sec. 2. And be it enacted, That the capital stock of said company shall be two hundred thousand dollars, with liberty to increase the same to four hundred thousand dollars, and shall be divided into shares of fifty dollars each, which shall be deemed personal property, and transferable in such manner as the said corporation shall, by their by-laws, direct.

Sec. 3. And be it enacted, That the above named persons may open books, to receive subscriptions to the capital stock of said corporation, at such time or times, and place or places, as they, or a majority of them, may think proper, and as soon as the same shall be subscribed, to give notice for a meeting of the stockholders to choose nine directors, and such election shall be made at the time and place appointed by such of the stockholders as shall attend for that purpose, either in person or by lawful proxy, each share of the capital stock entitling the holder thereof to one vote; and the said above named persons, or a

majority of them, shall be inspectors of the first election of directors of the said corporation, and shall certify under their hands the names of those persons duly elected, and deliver over the subscription books to the said directors, and the time and place of holding the first meeting of directors shall be fixed by the said persons named in the first section of this act or a majority of them; and the directors chosen at such meeting or at the annual elections of said corporation shall as soon as may be after every election choose out of their own number a president; and in case of the death, resignation or removal of the president or any director such vacancy or vacancies may be filled for the remainder of the year wherein they may happen, by the said board of directors, or a majority of them; and in case of the absence of the president, the said board of directors, or a majority of them, may appoint a president pro tempore, who shall have such power and functions as the by-laws of the said corporation shall provide.

Sec. 4. And be it enacted, That in case it should happen that an election of directors should not be made during the day when pursuant to this act it ought to be made, the said corporation shall not, for that cause, be deemed to be dissolved, but such election may be held at any other time; and the directors for the time being shall continue to hold their office until new ones shall have been chosen in their places.

Sec. 5. And be it enacted, That five directors of said corporation shall be competent to transact all business of the said corporation, and they shall have power to call in the capital stock of said company by such installments and at such times as they may direct, and in case of the non-payment of said installments or any of them to forfeit the share or shares upon which such default shall arise, and to make and prescribe such by-laws, rules and regulations as to them shall appear needful and proper touching the management and regulation of the stock, property, estate and effects of the said corporation; and also shall have power to appoint a secretary and so many clerks and servants as to them shall seem meet, and to establish and fix such salaries to them, and also to the president, as to the said board shall appear proper.

Sec. 6. And be it enacted, That the president and directors of the said company be and they are hereby authorized and in-

vested with all the rights and powers necessary and expedient to survey, lay out and construct a railroad, or lateral roads, from one or more suitable place or places in the village of Somerville, to one or more place or places in Elizabethtown, passing as near as practicable through Bound Brook, Plainfield, Scotch Plains and Westfield, not exceeding sixty-six feet wide, with as many sets of tracks and rails as they may deem necessary ; and it shall be lawful for the said president and directors, their agents, engineers, superintendents or others in their employ, to enter, at all times, upon all lands or water for the purpose of exploring, surveying, leveling or laying out the route or routes of such railroad or lateral roads, and of locating the same, and to do and erect all necessary works, buildings and appendages thereof, doing no unnecessary injury to private or other property, and when the route or routes of such road or lateral roads shall have been determined upon, and a survey of such route or routes deposited in the office of the secretary of state, then it shall be lawful for the said company by its officers, agents, engineers, superintendents, contractors, workmen, and other persons in their employ to enter upon, take possession of, hold, have, use, occupy and excavate any such lands, and to erect embankments, bridges, ferries, and all other works necessary to lay rails and to do all other things which shall be suitable or necessary for the completion or repair of the said road, or roads, subject to such compensation as is hereafter provided ; provided always, that the payment, or tender of the payment, of all damages for the occupancy of lands through which the said railroad or railroads may be laid out, be made before the said company, or any person under their direction or employ shall enter upon or break ground in the premises, except for the purpose of surveying and laying out said road or roads, unless the consent of the owner or owners of such lands be first had and obtained.

Sec. 7. And be it enacted, That when the said company or its agents cannot agree with the owner or owners of such required lands or materials for the use or purchase thereof, or when, by reason of the legal incapacity or absence of such owner or owners no such agreement can be made, a particular description of the land or materials so required for the use of the said company in the construction of the said road shall be given in

writing under the oath or affirmation of some engineer or proper agent of the company, and also the name or names of the occupant or occupants, if any there be, and of the owner or owners, if known, and their residence, if the same can be ascertained, to one of the justices of the Supreme Court of this state, who shall cause the said company to give notice thereof to the persons interested, if known and in this state, or if unknown or out of this state, to make publication thereof, as he shall direct for any term not less than twenty days and to assign a particular time and place for the appointment of the commissioners hereinafter named, at which time, upon satisfactory evidence to him of the service or publication of such notice aforesaid he shall appoint under his hand and seal, three disinterested, impartial and judicious freeholders, not resident in the county in which the lands or materials in controversy lie, or the owners reside, commissioners to examine and appraise the said land or materials, and to assess the damages, upon such notice, to be given to the persons interested as shall be directed by the justice making such appointment to be expressed therein not less than twenty days, and it shall be the duty of the said commissioners, having first taken and subscribed an oath or affirmation before some person duly authorized to administer an oath, faithfully and impartially to examine the matter in question, and to make a true report, according to the best of their skill and understanding, to meet at the time and place appointed and proceed to view and examine the said lands or materials, and to make a just and equitable estimate or appraisement of the value of the same, and assessment of damages, and shall be paid by the company for such lands or materials and damages aforesaid; which report shall be made in writing under the hands and seals of the said commissioners or any two of them, and filed within ten days thereafter, together with the aforesaid description of the land or materials, and the appointment and oaths or affirmations aforesaid, in the clerk's office of the county in which the land or materials are situate, to remain of record therein; which report, or a copy thereof, certified by the clerk of said county shall at all times be considered as plenary evidence of the right of the said company to have, hold, use, occupy, possess and enjoy the said land or materials, or of the said owner or owners to recover the amount

of said valuation with interest and costs in an action of debt, in any court of competent jurisdiction, in a suit to be instituted against the company, if they shall neglect or refuse to pay the same for twenty days after demand made of their treasurer, and shall, from time to time, constitute a lien upon the property of the company, in the nature of a mortgage, and the said justice of the supreme court shall, on application of either party and on reasonable notice to the others, tax and allow such costs, fees and expenses to the justice of the supreme court, commissioners, clerks and other persons performing any of the duties prescribed in this section of this act, as they or he shall think equitable and right, and to order and direct by whom the same shall be paid, under the circumstances of the case.

Sec. 8. And be it enacted, That in case the said company or the owner or owners of the said land or materials shall be dissatisfied with the report of the commissioners named in the preceding section, and shall apply to the justices of the supreme court, at the term after the filing of the said report, the court shall have the power upon good cause shown, to set the same aside, and thereupon to direct a proper issue for the trial of the said controvery to be formed between the said parties, and to order a jury to be struck and a view of the premises or materials to be had, and the said issue to be tried at the next circuit court to be holden in the said county, upon the like notice and in the same manner as other issues in the said court are tried, and it shall be the duty of the said jury to assess the value of the said land or materials, and damages sustained; and if they shall find a greater sum than the said commissioners shall have awarded in favor of the said owner or owners, then judgment thereon, with costs, shall be entered against the said company and execution awarded therefor; but if the said jury shall be applied for by the said owner or owners, and shall find the same or a less sum than the company shall have offered or the said commissioners awarded, then the said costs are to be paid by said applicant or applicants and either deducted out of the said sum found by the said jury or execution awarded therefor, as the court shall direct, provided that such application shall not prevent the company from taking the said land or materials upon the filing of the aforesaid report.

Sec. 9. And be it enacted, That it shall be the duty of the

said company to construct and keep in repair good and sufficient bridges or passages over or under the said railroad or roads where any public or other road shall cross the same, so that the passage of carriages, horses and cattle on the said road shall not be impeded thereby, and also where the said road shall intersect any farm or lands of any individual, to provide and keep in repair, suitable wagon-ways over or under said road, so that he may pass the same.

Sec. 10. And be it enacted, That the president and directors of the said company shall have power to have constructed or to purchase with the funds of the company and to place on any railroad constructed by them, all machines, engines, wagons, carriages, or vehicles for the transportation of persons, or any species of property thereon, as they may think reasonable, expedient or right, provided they shall not charge more than at the rate of six cents per mile, per ton, for the transportation of property on the said road or roads, or six cents per mile, for carrying each passenger on said railways in the carriages of the company, or three cents per mile, for each ton of property transported or three cents per mile for each passenger carried on said railways in the carriages of others and three cents per mile for each empty carriage; and that the railroad or roads and their appendages and the land over which the same shall pass and all the works and improvements, steam engines, carriages, and all other property whatsoever, belonging to the said company, at any time or times, are hereby vested in the said company incorporated by this act and their successors and assigns during the continuance of this act.

Sec. 11. And be it enacted, That the president and directors shall within one year after the said railroad shall have been completed, declare and make such dividend, as they may deem prudent and proper of the net profits thereof, and shall, in like manner, semi-annually thereafter, declare such dividends, and pay the same to the stockholders of the said company in proportion to the amount of shares held by them respectively, as they may deem prudent and proper.

Sec. 12. And be it enacted, That if any person shall wilfully impair, injure, destroy or obstruct the use of any railroad constructed under the provisions of this act by the said company, or of any of their necessary works, wharves, bridges, carriages,

or machines, such person or persons so offending shall forfeit and pay to the said company the sum of fifty dollars to be by them recovered in any court having competent jurisdiction, in an action of debt, and further shall be liable for all damages.

Sec. 13. And be it enacted, That the said company may have and hold real estate at the commencement and termination of said road or roads not exceeding two acres at each place, and may erect and build thereon houses, warehouses, machine shops, and such other buildings and improvements as they may deem expedient for the safety of property and construction of carriages, and other necessary uses, and take and receive the rents, profits and emoluments thereof, and shall have the privilege and authority to erect, build and maintain on the Elizabethtown Creek or Sound and at the Point respectively, such wharves, piers, bridges, and other facilities as they may think expedient and necessary for the full enjoyment of all the benefits conferred by this act; provided, that nothing herein contained shall be so construed as to give the company hereby incorporated the right to establish or carry on a ferry for the carrying of passengers or freight, on or from lands taken by inquest.

Sec. 14. And be it enacted, That the road or roads authorized by this act be and the same are hereby declared a public highway, and shall be constructed with a track for one or more horses and free for the passage of any railroad carriage thereon with passengers or property, upon payment of the tolls prescribed by this act; provided always, that the said carriages so used thereon shall be of the same description in the formation of the wheels, and length of axle, as those used by the company, and shall be so regulated as to the time of starting and rates of traveling as not to interfere with the carriages of the company.

Sec. 15. And be it enacted, That as soon as the railroad with its appendages shall be finished so as to be used, the president and treasurer of said company shall file under oath or affirmation a statement of the amount of the cost of said road, including all expenses in the office of the secretary of state, and annually thereafter the president and treasurer of said company shall under oath or affirmation, make a statement to the legislature of this state, of the proceeds of said road; until the

net income of said road shall amount to seven per centum upon the amount of its cost, and as soon as the net proceeds of said railroad shall amount to seven per centum upon its cost, the said corporation shall pay to the treasurer of this state a tax of one-half of one per centum on the cost of said road to be paid annually thereafter on the first Monday in January of each year; provided, that no other tax or impost shall be levied, or assessed upon the said company.

Sec. 16. And be it enacted, That at any time after the expiration of fifty years from the completion of the said road the legislature of this state may cause an appraisement of the said road and the appendages thereof to be made by six persons, three of whom shall be appointed by the chief justice of this state, for the time being the remaining three by the company, who, or a majority of them, shall report the value thereof to the legislature within one year from the time of their appointment; or if they cannot agree they shall choose a seventh who, with the aforesaid six, shall report as aforesaid; or in case the said company shall neglect or refuse to appoint the said three persons on their part for two months after their said appointment by the said chief justice then the three persons so appointed by him shall proceed to make such appraisement which shall be binding on the said company, or in case the said six commissioners shall be appointed as aforesaid and they cannot agree on the seventh man then upon two weeks notice to the said company, the said chief justice shall appoint such seventh man, as aforesaid, to make such appraisement as aforesaid, and thereupon the state shall have the privilege for three years of taking the said road, upon the payment to the company of the amount of the said report within one year after electing to take said road; which report shall be filed in the office of the secretary of this state, and the whole property and interest of said road and the appendages thereof shall be vested in the State of New Jersey, upon payment of the amount so reported to the said company; and that it shall be the duty of the president of the company to lay before the legislature under oath or affirmation, when they shall so request, a full and fair statement of the costs of said road and of all the receipts and disbursements of the company; provided always, that the aforesaid valuation shall be made without reference to the re-

ceipts or disbursements of the company, or advance of the stock; and the said valuation shall in no case exceed the first cost or valuation of said road with the appendages thereof.

Sec. 17. And be it enacted, That if the said railroad shall not be completed and in use at the expiration of seven years from the fourth day of July next ensuing, that then and in that case this act shall be void.

Sec. 18. And be it enacted, That the legislature of this state shall have the right to subscribe for stock of the said company, to the amount of twenty-five thousand dollars, at any time before, or within twelve months after, the said road or roads are completed.

Sec. 19. And be it enacted, That this act shall be deemed and taken as a public act, and shall, at all times, be recognized as such, in all courts and places whatsoever.

Passed February 9, 1831.

Office Supreme Court U. S.
FILED,
FEB 24 1890
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

THE STATE,
HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,
Plaintiff in Error;
vs.
SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,
Defendants in Error.

No. 194.

NOTICE, MOTION, BRIEF AND AFFIDAVITS.

Error to the Court of Errors and Appeals of the State of New Jersey.

FRANK BERGEN,
For Defendants in Error.

In the Supreme Court of the United States.

THE STATE,
HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,
Plaintiff in Error;
vs.
SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,
Defendants in Error.

Notice.

To ROBERT W. DEFOREST,
GEORGE R. KAERCHER and
BENJAMIN WILLIAMSON :

You are hereby notified that I shall move on behalf of the defendants in error in the above stated cause before the Supreme Court of the United States, at Washington, D. C., on Monday, the third day of March next, at the hour of twelve o'clock, noon, of that day, or as soon thereafter as counsel can be heard thereon, to dismiss the writ of error heretofore issued in the above stated cause, and now pending before the said court, for the reasons stated in the written motion, of which a copy is hereto annexed.

And you are further notified that I shall ask leave on the argument of said motion to read the affidavits, of which copies are hereto annexed.

And you are further notified that a copy of my brief to be used on said argument is hereto annexed.

Respectfully,

FRANK BERGEN,
Attorney for and of Counsel with
Defendants in Error.

Dated February 7, 1890.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE,

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,
Plaintiff in Error;

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,
Defendants in Error.

Motion.

And now come the said Samuel D. Bowers, Comptroller of the City of Elizabeth, and the City of Elizabeth, the defendants in error in the above stated cause, by Frank Bergen, their counsel, here in court, and move that the writ of error issued in the above stated cause be dismissed, for the following reasons:

First. Because the taxes levied on the property of the Central Railroad Company in the City of Elizabeth, in and for the years eighteen hundred and seventy-six to eighteen hundred and eighty-two inclusive, and being the same taxes mentioned in the record in said cause, have been paid and satisfied in full since the said writ of error was issued, together with the costs of the said cause.

Second. Because the said writ of error is being prosecuted by the plaintiff in error for the sole purpose of obtaining the opinion of this Court as to the validity of an alleged contract on the subject of taxation, said to have been made by the State of New Jersey with the Central Railroad Company of New Jersey, and the said State is not a party to this cause except nominally upon the side adverse to the rights and interests of the said State, but is not a party in the form or sense in which a party in interest must be a party to a litigation in order to be bound by the judgment of the court.

Third. Because the plaintiff in error does not owe any taxes to the City of Elizabeth, nor to Samuel D. Bowers, the former comptroller of the said city, nor to any existing officer of said city, nor does the said railroad company owe any sum of money to said city for taxes.

Fourth. Because all claims for taxes heretofore made or held by the City of Elizabeth, or any officer of said city on its behalf, against the Central Railroad Company of New Jersey, or the property of said company, or any receiver of the said company, have been adjusted, compromised and paid in full, voluntarily by the said railroad company or its appropriate officer or representative.

FRANK BERGEN,

Dated February 7, 1890. *Counsel.*

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE,

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,

Plaintiff in Error;

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,

Defendants in Error.

Brief on Motion to Dismiss Writ of Error.

FIRST.

Courts will not entertain jurisdiction of cases when there is no real or substantial controversy between the parties. As soon as it is made to appear that a suit has been commenced, or is being prosecuted merely to obtain the opinion of the court upon a question of law, which a party desires to know for his own interest or his own purposes, the suit will be dismissed.

CITATIONS.

Cleveland v. Chamberlain, 1 Black, 419.
Lord v. Veazie, 8 Howard, 251.
Smith v. Junction R. R. Co., 29 Ind., 546.
San Mateo Co. v. Southern Pac. R. R. Co., 116 U. S., 138.
Henkin v. Guerss, 12 East., 247.
Brewster v. Kitchin, Comb., 424.
Coxe v. Phillips, Lee temp. Hardw., 237.
In re R. J. Elsam, 10 Eng. Common Law Reports, N. S., 193.
Freeholders of Essex v. Freeholders of Union, 44 N. J., 438.

SECOND.

When claims for taxes have been voluntarily paid to municipalities, an action cannot be maintained to recover the money

so paid; and whenever in the course of litigation claims for taxes are paid without compulsion the suit must abate.

CITATIONS.

Dillon Municipal Corporations, Secs. 941 to 947 inclusive, 3d Edition, and cases cited.

San Maeto Co. v. Southern Pac. R. R. Co., 116 U. S., 138.

THIRD.

The taxes which originally were the subject matter of the litigation in the above stated cause have been adjusted since the writ of error was issued, to the satisfaction of the Receivers of the Central Railroad Company who succeeded Mr. Little, and paid in full as adjusted. No claim was made to exemption by reason of an irrepealable contract; no objection or protest was made by the company or any one on its behalf to the payment of the taxes as adjusted by the commissioners; no attempt was made on the part of the city to compel payment of the taxes as adjusted by the commissioners. By the act under which the adjustment was made the railroad company had sixty days in which to make payment, without interest. The taxes were paid, however, before the interest began to accrue. Chapter CXII of the Laws of New Jersey, 1886, Section 4. It appears also that the Central Railroad Company have voluntarily paid taxes since eighteen hundred and eighty-three under Chapter CI of the Laws of New Jersey, 1884.

FOURTH.

These facts can properly be brought before the court by affidavits.

CITATIONS.

Cleveland v. Chamberlain, 1 Black, 419.

Lord v. Veazie, 8 Howard, 251.

FRANK BERGEN,

Counsel for Defendants in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE,

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,
Prosecutor and Plaintiff in Error;

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,
Defendants in Error.

Affidavit.

UNITED STATES OF AMERICA,
District of New Jersey, } *ss:*

Albert B. Carlton, being duly sworn on his oath, saith that he is the Comptroller of the City of Elizabeth, New Jersey, and has held that office since the sixth day of January, eighteen hundred and eighty-three, and that Samuel D. Bowers was the predecessor of deponent in the said office.

And deponent further saith that he is charged by law with the duty of collecting taxes in the City of Elizabeth, and that John W. Whelan, at present City Treasurer of the said city, is the custodian of the money received for taxes.

And deponent further saith that taxes were levied by the appropriate officers of the City of Elizabeth on the property of the Central Railroad Company, mentioned in the record of the above stated cause, in and for the years eighteen hundred and seventy-six to eighteen hundred and eighty-three inclusive, for state, state school, county and city purposes, amounting in the aggregate to the sum of forty-seven thousand six hundred and eighty-eight dollars and two cents; that on the various amounts of said taxes interest began to accrue on the twentieth day of October, in each year, at the rate of ten per centum per annum; that in the year eighteen hundred and eighty-six an act was passed by the Legislature of the State of New Jersey reducing the interest on delinquent taxes to seven per centum per annum; that on the first of October, eighteen hundred and

eighty-seven, the amount of interest accrued on the said delinquent taxes amounted to the sum of twenty-five thousand one hundred and twenty-one dollars approximately; that in the year eighteen hundred and eighty-six Commissioners of Adjustment were appointed in and for the City of Elizabeth in pursuance of chapter one hundred and twelve of the laws of New Jersey, passed in that year; that said commissioners during the year eighteen hundred and eighty-seven revised, adjusted and reassessed the said taxes and interest, and fixed the amount of the same at the sum of thirty-three thousand seven hundred and seventy-one dollars and eighteen cents, in lieu of all arrearages of taxes and interest thereon claimed by the City of Elizabeth from the Central Railroad Company, being the same claims for taxes mentioned in the proceedings in the above stated cause, together with claims for taxes levied in the year eighteen hundred and eighty-three and interest thereon.

And deponent further saith that the amount of the taxes levied by the said city on the property of the said company in the year eighteen hundred and eighty-three amounted to the sum of five thousand seven hundred and twenty-eight dollars; that subsequent to said year no taxes have been levied on the property of the said company by the local officers of the said city, but that said property has been taxed under chapter one hundred and one of the laws of said state, passed in the year eighteen hundred and eighty-four, entitled "An Act for the taxation of railroad and canal property."

And deponent further saith that during the progress of the revision, adjustment and reassessment of the said taxes by the said Commissioners of Adjustment, H. W. Douty, real estate agent of the Central Railroad Company, appeared before the said commissioners from time to time, and urged the reduction of the claims of the city for taxes against the property of the said company; and that after the said adjustment and reassessment had been completed the said taxes as adjusted were paid voluntarily by the said railroad company, and before interest on the same began to accrue under the act by virtue of which the adjustment was made; that no warrant was issued or other step or proceeding taken by or on the part of the said city for the collection of the said taxes prior to the time of payment; but said payment was made several months prior to the time

when any proceeding could have been taken to enforce payment of the same; that no protest against the payment, or objection thereto was made by the said company or any person acting on its behalf.

A. B. CARLTON.

Sworn and subscribed before me,
this 7th day of February, 1890,
at Elizabeth, New Jersey.

[L. S.] HOWARD RICHARDS,
United States Commissioner.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE,

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,

Plaintiff in Error;

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,

Defendants in Error.

Affidavit.

UNITED STATES OF AMERICA, *District of New Jersey*, } *ss:*

Louis Quien being duly sworn, on his oath saith that he resides in the City of Elizabeth, New Jersey, that he was appointed clerk of the Commissioners of Adjustment in the said city on the eighth day of June, eighteen hundred and eighty-six, and still holds said office; that during the year eighteen hundred and eighty-seven the said Commissioners of Adjustment revised, adjusted and reassessed claims for taxes held by the City of Elizabeth against property therein belonging to the Central Railroad Company of New Jersey, said taxes having been originally levied by the authorities of said city in and for the years eighteen hundred and seventy-six to eighteen hundred and eighty-three inclusive, upon the property shown on the maps annexed to the record in the above stated cause; that during the progress of the revision, adjustment and reassessment of said taxes, H. W. Douty, Esq., Real Estate Agent of the said railroad company, appeared before the said commissioners from time to time in the interest of the said company, and urged the said commissioners to reduce the amounts of some of the claims of the city against the property of the said company, but did not at any time object to or deny the right or power of the said commissioners to reassess said taxes or any part thereof on the ground that said company had a contract with the State of New Jersey exempting their property from taxation, except in the manner provided in the contract.

And deponent further saith that in the month of October, eighteen hundred and eighty-seven, the said Commissioners of Adjustment revised, adjusted and reassessed part of the claims of the said city for taxes against the land of the company fronting on East Broad street in said city, and shown on map number three annexed to the record in this cause; that in some way claims for taxes by the city against said land for the years eighteen hundred and eighty-four, eighteen hundred and eighty-five, and eighteen hundred and eighty-six, appeared in the proceedings before the said commissioners, and appeared in an item of five thousand seven hundred and sixty-nine dollars and fifty-four cents, which the said commissioners had determined to fix in lieu of prior claims for taxes against the said land; that before the final draft of the report was made a conference took place between the said commissioners and the said Douty upon the said matter, and on the twenty-sixth of October, eighteen hundred and eighty-seven, the said Douty addressed a letter to the said commissioners, which was received by them on the same day, as follows:

"John S. Kennedy and Joseph S. Harris, Receivers of
CENTRAL RAILROAD COMPANY OF NEW JERSEY,
Real Estate Office, 119 Liberty Street,
NEW YORK, Oct. 26, 1887.

H. W. Douty,
Real Estate Agent.

MESSRS. LUDLOW, CRANE AND HEIDRITTER,
Commissioners for the Adjustment of Taxes in Arrear,
Elizabeth, N. J.

Gentlemen:—Referring to your adjustment of $5,769.54 for taxes and interest for years 1876 to 1886 inclusive, upon our East Broad street property, Elizabeth—

As you will see by enclosed copy of letter from State Board of Assessors, the tax upon above property for 1884, 1885 and 1886 has been paid by this company to the state and by the state to your city.

We wish to avoid double payment, and therefore request you to revise the adjustment of $5,769.54 by deducting the amounts you have fixed upon for these years, amounting to $1,230.00.

If this is done I am satisfied the adjustment will be promptly paid after confirmation.

Thanking you for the interview accorded me, I remain,

Very respectfully yours,

H. W. DOUTY,
R. Est. Agt."

The letter from the State Board of Assessors referred to is as follows:

"STATE BOARD OF ASSESSORS,
TRENTON, N. J., Oct. 24th, 1887.

H. W. DOUTY,
Real Estate Agent, C. R. R. of N. J.

Dear Sir:—I hereby certify that the State Board of Assessors have valued and assessed a certain tract of land belonging to the Central R. R. of N. J. in the taxing district of the City of Elizabeth, and used for railroad purposes, described as follows:

"Excess in width between Jefferson and Broad streets."

Area 4.36 acres.

Valuation for 1884, . . .	$43,600
Valuation for 1885, . . .	60,000
Valuation for 1886, . . .	50,000

The Central R. R. Co. of N. J. having paid all taxes levied by this Board, the above named taxing district will receive its proportion of the above tax for said years; in fact, I have been informed by the State Comptroller that said taxing district has already received the allotment due from the above named property.

If this property has been assessed by the local authorities, it is a duplicate assessment and should be cancelled.

(Sgd,) JOHN T. VAN CLEEF,
Secretary."

And deponent further saith that the sum of twelve hundred and thirty dollars, mentioned in said letter of October twenty-sixth, eighteen hundred and eighty-seven, was deducted by the Commissioners of Adjustment according to the request contained therein, and the report containing the proceedings of the said commissioners relating to said land, and all other reports of the proceedings of the said commissioners relating to land of

the said railroad company, were confirmed by the Circuit Court of the County of Union, after notice given as directed by said court, without objection by or on behalf of the said railroad company.

LOUIS QUIEN.

Sworn and subscribed before me, at Elizabeth, New Jersey, this 7th day of February, 1890.

[L. S.] HOWARD RICHARDS,
United States Commissioner.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE,

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,

Plaintiff in Error;

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,

Defendants in Error.

Affidavit.

UNITED STATES OF AMERICA, *District of New Jersey*, } *ss:*

John W. Whelan, being duly sworn on his oath, saith that he resides in the City of Elizabeth, New Jersey; that he is City Treasurer of the City of Elizabeth, and has held that office for seven years last past continuously; that by virtue of said office deponent is charged with the duty of receiving all taxes levied and collected in the said city; that during the year eighteen hundred and eighty-seven, the Commissioners of Adjustment appointed in and for said city by the Circuit Court of the County of Union, under chapter one hundred and twelve of the laws of the said State, passed in the year eighteen hundred and eighty-six, revised, adjusted and reassessed all claims of the said City against the property of the Central Railroad Company of New Jersey therein; that the amount reassessed by said commissioners for and on account of all of the claims of said city was the sum of thirty-three thousand seven hundred and seventy-nine dollars and eighteen cents, which was much less than the amount originally claimed by the said city against the property of said company; that the entire amount so fixed by the said Commissioners of Adjustment has been paid by the said railroad company, the payment thereof having been made as follows: On August ninth, eighteen hundred and eighty-seven, six dollars and eighty-nine cents; on October eight in said year, twenty-eight thousand eight hundred and twenty

dollars and forty-five cents; on November third in said year, the sum of two dollars and thirty cents; and on June thirteenth, eighteen hundred and eighty-eight, the sum of four thousand nine hundred and forty-one dollars and fifty-four cents; that all of said payments were made before interest began to accrue on the same after the adjustment and reassessment aforesaid; that no proceedings were taken by the said city by warrant or otherwise to compel payment of said taxes or any part thereof, and no proceedings to compel payment could have been taken by the city until the expiration of several months after the respective payments were in fact made; that the Central Railroad Company at the present time does not owe any taxes to the City of Elizabeth, nor has the city any claim for taxes against any property of the said company in the city, nor has any officer of said city any such claim; that the Central Railroad Company is not now in the hands of or under the control of any receiver or receivers; that neither Henry S. Little, formerly receiver of said company, or any of his successors in the office of receiver of said company owe to the said city any taxes; that at the time of making the payment of twenty-eight thousand eight hundred and twenty dollars and forty-five cents, Mr. H. W. Douty, the agent of the said company, who made the payment, stated to deponent that the adjustment of said claims for taxes as made by the said commissioners was satisfactory.

J. W. WHELAN.

Sworn and subscribed before me, at Elizabeth, N. J., this 7th day of February, 1890.

[L. S.] HOWARD RICHARDS,
United States Commissioner.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE,

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,

Plaintiff in Error;

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,

Defendants in Error.

Affidavit.

UNITED STATES OF AMERICA, *District of New Jersey*, } *ss:*

George C. Ludlow, being duly sworn on his oath, saith that he resides in the City of New Brunswick, New Jersey; that he was appointed a Commissioner of Adjustment in and for the City of Elizabeth, by the Circuit Court of the County of Union, on the eighteenth day of May, eighteen hundred and eighty-six, in pursuance of chapter one hundred and twelve of the laws passed by the Legislature of the State of New Jersey in said year, and still holds said office; that during the year eighteen hundred and eighty-seven deponent, together with Messrs. J. Williams Crane and Frederick L. Heidritter, the other Commissioners of Adjustment appointed by said court under said act, revised, adjusted and reassessed certain claims of the City of Elizabeth for taxes originally levied on the property of the said company therein in and for the years eighteen hundred and seventy-six to eighteen hundred and eighty-three inclusive; that while the matter of said taxes was before the said Commissioners of Adjustment, H. W. Douty, Esq., real estate agent of said company, appeared before the said commissioners from time to time representing the said company and acting in its behalf as to the adjustment of said claims for taxes; that at no time did the said Douty, or any one else on behalf of the said railroad company, make any objection to the right or power of the said commissioners to revise, adjust

and reassess the said taxes; that in the month of October, eighteen hundred and eighty-seven, the said Commissioners of Adjustment received a letter from the said Douty, a copy of which is set out in the affidavit of Louis Quien, this day made in the above stated cause, and which deponent has read.

G. C. LUDLOW.

Sworn and subscribed before me, at Elizabeth, N. J., this seventh day of February, 1890.

[L. S.] HOWARD RICHARDS,
United States Commissioner.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE,

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,
Prosecutor and Plaintiff in Error;

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,
Defendants in Error.

Affidavit.

UNITED STATES OF AMERICA,
District of New Jersey, } *ss:*

J. Williams Crane being duly sworn, on his oath saith that he resides in the Township of Union, Union County, New Jersey; that he was appointed a Commissioner of Adjustment in and for the City of Elizabeth, by the Circuit Court of the County of Union, on the eighteenth day of May, eighteen hundred and eighty-six, in pursuance of chapter one hundred and twelve of the laws of said state passed in said year, and still holds said office; that during the year eighteen hundred and eighty-seven deponent, together with Messrs. George C. Ludlow and Frederick L. Heidritter, the other Commissioners of Adjustment appointed by said court under said act, revised, adjusted and reassessed certain claims of the City of Elizabeth, for taxes originally levied on the property of said company therein, in and for the years eighteen hundred and seventy-six to eighteen hundred and eighty-three inclusive; that while the matter of said taxes was before the said Commissioners of Adjustment, H. W. Douty, Esq., real estate agent for the said company, appeared before the said commissioners from time to time, representing the said company, and acting in its behalf as to the adjustment of said claims for taxes; that at no time did the said Douty, or any one else on behalf of said railroad company, make any objection to the right or power of the said commissioners to revise, adjust and reassess the said taxes; that in the month of October, eighteen hundred and eighty-

seven, the said Commissioners of Adjustment received a letter from the said Douty, a copy of which is set out in the affidavit of Louis Quien, this day made in the above stated cause, and which deponent has read.

J. WILLIAMS CRANE.

Sworn and subscribed before me, at Elizabeth, N. J., this seventh day of February, 1890.

[L. S.]

HOWARD RICHARDS,
United States Commissioner.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE,

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,

Plaintiff in Error;

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,

Defendants in Error.

Affidavit.

UNITED STATES OF AMERICA, *District of New Jersey*, } *ss:*

Frederick L. Heidritter, being duly sworn on his oath, saith that he resides in the City of Elizabeth, New Jersey; that he was appointed a Commissioner of Adjustment in and for the City of Elizabeth, by the Circuit Court of the County of Union, on the twentieth day of November, eighteen hundred and eighty-six, in pursuance of chapter one hundred and twelve of the laws of said state passed in said year, and still holds said office; that during the year eighteen hundred and eighty-seven deponent, together with Messrs. George C. Ludlow and J. Williams Crane, the other Commissioners of Adjustment appointed by said court under said act, revised, adjusted and reassessed certain claims of the City of Elizabeth, for taxes originally levied on the property of said company therein, in and for the years eighteen hundred and seventy-six to eighteen hundred and eighty-three inclusive; that while the matter of said taxes was before the said Commissioners of Adjustment, H. W. Douty, Esq., real estate agent for the said company, appeared before the said commissioners from time to time, representing the said company, and acting on its behalf as to the adjustment of said claims for taxes; that at no time did the said Douty, or any one else on behalf of said railroad company, make any objection to the right or power of the said commissioners to revise, adjust and reassess the said taxes; that in the month of October, eighteen hundred and eighty-seven, the said Commis-

sioners of Adjustment received a letter from the said Douty, a copy of which is set out in the affidavit of Louis Quien, this day made in the above stated cause, and which deponent has read.

FREDERICK L. HEIDRITTER.

Sworn and subscribed before me, at Elizabeth, N. J., this seventh day of February, 1890.

[L. S.] HOWARD RICHARDS,
United States Commissioner.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE,

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,

Plaintiff in Error;

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,

Defendants in Error.

Affidavit.

UNITED STATES OF AMERICA, *District of New Jersey*, } *ss:*

Frank Bergen, being duly sworn on his oath, saith that he is City Attorney of the City of Elizabeth, and has held that office for more than nine years last past; that he appeared for the defendants in error in the above stated cause in the litigation in the courts of the State of New Jersey; that on the eighth day of September, eighteen hundred and eighty-six, the costs of the above cause, which had accrued in the said state courts were paid to deponent in full, by John S. Kennedy and Joseph S. Harris, who were at that time receivers of the Central Railroad Company of New Jersey.

FRANK BERGEN.

Sworn and subscribed before me, at Elizabeth, N. J., this seventh day of February, 1890.

[L. S.] HOWARD RICHARDS,
United States Commissioner.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE,
HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,
Plaintiff in Error;
vs.
SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,
Defendants in Error.

Affidavit.

UNITED STATES OF AMERICA,
District of New Jersey, } *ss:*

John J. Toffey, being duly sworn on his oath, saith that he is the Treasurer of the State of New Jersey, and has held that office from January twentieth, eighteen hundred and eighty-five, to the present time; that he is the person and officer charged by law with the duty of receiving payment of the taxes imposed, assessed and levied upon the property and franchises of the railroad corporations chartered by and operating railroads in the State of New Jersey; that taxes were duly assessed and levied upon the property and franchises of the Central Railroad Company of New Jersey, pursuant to the provisions of the act of the legislature of April 10th, 1884, in and for the years eighteen hundred and eighty-four, eighteen hundred and eighty-five, eighteen hundred and eighty-six, eighteen hundred and eighty-seven and eighteen hundred and eighty-eight; and that the said, the Central Railroad Company of New Jersey has duly paid to this deponent the taxes so assessed and levied upon its property and franchises, for each of the years aforesaid, and that at the time of making said payments, or at any other time, the said company did not make or file with this deponent any protest against said payment, or any claim to exemption from such taxes.

JOHN J. TOFFEY.

Sworn to and subscribed this 7th day of February, A. D. 1890, at Jersey City, before me,

[L. S.] ISAAC ROMAINE,
U. S. Commissioner Dist. of N. J.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE,

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,
Plaintiff in Error;

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,
Defendants in Error.

Affidavit.

UNITED STATES OF AMERICA,
District of New Jersey, } *ss:*

Edward J. Anderson, being duly sworn on his oath, saith that he is comptroller of the State of New Jersey, and has held that office for more than six years last past continuously; that he is the person and officer who, by law, is charged with the duty of auditing and collecting the taxes imposed, assessed and levied upon the property and franchises of the railroad corporations chartered by and operating railroads in the State of New Jersey; that taxes were duly assessed and levied upon the property and franchises of the Central Railroad Company of New Jersey, pursuant to the provisions of the act of the legislature of April 10th, 1884, in and for the years eighteen hundred and eighty-four, eighteen hundred and eighty-five, eighteen hundred and eighty-six, eighteen hundred and eighty-seven, and eighteen hundred and eighty-eight, and that the said Central Railroad Company of New Jersey has duly paid the taxes so assessed and levied upon its property and franchises for each of the years aforesaid, and that at the time of making said payments, or at any other time, the said company did not submit to or file with this deponent any protest against such payment, or any claim to exemption from such tax.

E. J. ANDERSON.

Sworn to and subscribed before me, at Trenton, in said district, this 6th day of February, A. D. 1890.

LEWIS W. SCOTT,
U. S. Circuit Court Commissioner, District of New Jersey.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE,

HENRY S. LITTLE, Receiver of the Central Railroad Company of New Jersey,

Plaintiff in Error;

vs.

SAMUEL D. BOWERS, Comptroller of the City of Elizabeth, and the CITY OF ELIZABETH,

Defendants in Error.

Affidavit of Service.

UNITED STATES OF AMERICA,
District of New Jersey, } *ss:*

Albert B. Carlton being duly sworn, on his oath saith that he served true copies of the foregoing notice, motion, brief and affidavits on George R. Kaercher, Attorney for the Plaintiff in Error in the above stated cause, at his office, number two hundred and twenty-seven South Fourth street, in the City of Philadelphia, Pennsylvania, on the eighth day of February, eigtheen hundred and ninety, personally.

A. B. CARLTON.

Sworn and subscribed before me, this eighth day of February, 1890, at Elizabeth, New Jersey.

[L. S.] HOWARD RICHARDS,
United States Commissioner.

"Endorsed. In the Supreme Court of the United States. The State, Henry S. Little, Receiver of the C. R. R. of N. J., Plaintiff in Error, vs. Samuel D. Bowers, Comptroller of the City of Elizabeth, et al., Defendants in Error. Notice, Motion, Brief and Affidavits. Frank Bergen, for Defendants in Error."